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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 46

MAURICE A. HUTCHESON, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

Neither the oral opinion of the district court (R. 174) nor the memorandum judgment of affirmance by the court below (R. 191-192) are reported.

JURISDICTION

The judgment of the court below (R. 191-192) was entered on December 7, 1960. A timely petition for rehearing was denied on January 9, 1961 (R. 192). The petition for certiorari was filed on February 7, 1961, and granted on April 3, 1961 (R. 193). The jurisdiction of this Court rests on 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED

Petitioner stands convicted of contempt of Congress, for refusing, on grounds of a denial of due process of law, to answer the questions set out in the present Federal indictment. The issues now presented are:

1. Whether, in requiring answers to those questions from petitioner, who was then under a State indictment for felony, the Committee of the United States Senate by its procedures and public statements would so far have pretried the case in which he was under State indictment, would so far have aided the prosecution in that case, and would so far have impaired his rights to a fair and impartial trial thereof, as to deprive him of due process of law.

2. Whether, by insisting on answers from petitioner in the circumstances disclosed by the present record, the Committee so far assumed powers which could lawfully be exercised only by executive and judicial branches of government as to have acted without lawful power or jurisdiction.

3. Whether, in refusing to answer the questions set out in the present Federal indictment, the petitioner was, as held below, limited in relying on his privilege against self-incrimination.[1]

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[1] We have rephrased and to some extent narrowed the questions set forth in the petition for certiorari (Pet. 2-3). But, in compliance with Rule 40(1)(d)(2), we have neither raised additional questions nor changed the substance of those presented in the petition.

Thus, Question 1 above is a rephrasing of Question 1(b), (c), (d) and (f) of the Petition; Question 2 above a rephrasing of Question 1(a) and (e) of the Petition; Question 3 above a rephrasing of Question 3 of the Petition.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

1. The Fifth Amendment is in these terms:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. Section 192 of Title 2, U. S. Code, provides as follows:

"§ 192. Refusal of witness to testify or produce papers

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

STATEMENT

Petitioner was charged in an eighteen count indictment (R. 4-7), returned in the United States District Court for the District of Columbia, with having refused, in violation of 2 U.S.C. § 192, just set out, to answer eighteen questions, alleged to be pertinent to the matter under inquiry,

put to him by the Senate Select Committee on Improper Activities in the Labor or Management Field. Petitioner waived trial by jury (R. 1), was found guilty by the court on all counts, and was sentenced generally to six months' imprisonment and to pay a fine of $500 (R. 189-190). The court below affirmed without opinion (R. 191-192).

A. Background of the Committee's Investigation

The Senate Select Committe on Improper Activities in the Labor or Management Field, hereinafter referred to as the Committee, was established pursuant to a resolution, agreed to on January 30, 1957, authorizing it "to conduct an investigation and study of the extent to which criminal or other improper practices or activities are, or have been, engaged in in the field of labor-management relations or in groups or organizations of employees or employers to the detriment of the interests of the public, employers or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities" (S. Res. 74, 85th Cong., 1st sess.; R. 176-177). The life of the Committee, subsequently extended to January 31, 1959 (S. Res. 221, 85th Cong., 2d sess.; R. 179-180), has since expired.

During the course of the investigation, the Committee received a great deal of information with respect to the use of union funds (R. 13). Included in this information was evidence that the United Brotherhood of Carpenters and Joiners of America had engaged in financial transactions with Maxwell C. Raddock, owner of the World Wide Press, a large New York printing plant, and publisher of the Trade Union Courier (R. 12-13). In an endeavor to obtain additional information with respect to these matters, the Committee on May 20, 1958, issued a subpoena to petitioner, who was and is General President of the United Brotherhood of Carpenters and Joiners of America, directing him to appear to testify on June 2, 1958 (R. 11).

B. Committee Chairman's opening statement

The date for petitioner's appearance was subsequently extended to June 27, 1958 (R. 11). Hearings, however, began on June 4, 1958, with the following opening statement by the Chairman of the Committee (R. 12-13):

> "The committee will hear witnesses today on the operations of Mr. Maxwell Raddock, owner of the World Wide Press, a large New York printing plant, and publisher of the Trade Union Courier.
>
> "Witnesses will be called to testify as to financial interests and investments in the World Wide Press by labor organizations and certain labor officials and the unorthodox manner in which bonds of the company were issued and handled.
>
> "The committee will also inquire into the propriety of labor officials' having financial interests in Maxwell Raddock's company at the same time that they invested considerable sums of their union's funds in the plant that prints the Trade Union Courier and in subscriptions to that paper.
>
> "The manner in which advertisements were solicited by the Trade Union Courier has been the subject of investigation by the committee staff. The committee is particularly interested in whether solicitors employed by the Trade Union Courier represented it as the organ of the AFL-CIO as well as making other false representations.
>
> "Preliminary investigation by the staff has disclosed certain financial transactions of the United Brotherhood of Carpenters which require explanation.
>
> "One of these transactions involves very large expenditures in the publication of a book entitled, 'The Portrait of an American Labor Leader, William L. Hutcheson.'
>
> "Maurice Hutcheson, who is now president of the United Brotherhood of Carpenters, and Mr. Raddock will be questioned about this matter.
>
> "The Chair may say that during the existence of this committee we have had much information and a great deal of testimony regarding the misuse of union funds, regarding personal financial gain and benefit and profit and expenditure of such funds by union officials, and we are still pursuing that aspect of labor-management relations.

"We have also had considerable evidence of collusion between management and union officials where they both profit at the expense of the men who work and pay the dues.

"In this particular instance, there is indication that the union membership have again been imposed upon by transactions that have occurred that we will look into as the evidence unfolds before us."

The hearings adjourned on June 6 and did not resume until June 25.

C. Petitioner's State Indictment

Meanwhile, nearly four months earlier—on February 18, 1958—petitioner, together with O. William Blaier and Frank M. Chapman, had been indicted in Marion County, Indiana, on two counts charging felony (Committee and Govt. Ex. 47, R. 79, 88, 91, 182-189).

The first count of this indictment (R. 182-186) was for a continuing conspiracy. It alleged that in Marion County, Indiana, and on or about May 1, 1956, the three defendants had conspired with the purpose of bribing Harry Doggett, Assistant Director, Right of Way Department of the State Highway Department of Indiana, by promise of "one-fifth (⅕) of all profits thereafter received" by them or any of them from "any and all grants or conveyances of rights of way by the defendants, or any of said defendants, to the State of Indiana across real estate owned by the defendants, or any of them, in the State of Indiana;" that "thereafter, pursuant to and in furtherance of the aforesaid conspiracy," Doggett exercised official action for the acquisition of rights of way across lands owned by the defendant Chapman in Lake County and by the defendant Blaier in Wayne County, Indiana; and that Doggett was paid as his one-fifth sums totaling $15,800.

This alleged conspiracy was described as a continuing one. The count alleged neither a time limit nor that the conspiracy had terminated.

The second count of the indictment (R. 186-189) charged the substantive offense of paying to Doggett $10,000 on or about December 17, 1956, as such a bribe.[2]

The acts charged in the indictment named the defendants as individuals and related to lands owned by them individually. The United Brotherhood of Carpenters and Joiners of America was not mentioned anywhere in either count, nor did the indictment allege, what is the fact, that the defendants named were, respectively, General President, Second General Vice President, and General Treasurer, of that union. (Chapman has died since.)

In connection with what accordingly came to be referred to by the Committee's counsel as "the highway scandal" (R. 72), the Committee opened its public inquiry on June 26, 1958, with five witnesses, including Blaier (a co-defendant in the foregoing Indiana indictment), and continued it on June 27 with this petitioner (R. 16, 88-89, 90).

D. Raddock's testimony

Petitioner and his counsel, Howard Travis, Esq., of the Indiana bar, who represented petitioner and Blaier both before the Committee and for the trial of the Indiana indictment, were continuously present during the Committee's interrogations on June 26 (R. 11, 76-77, 78, 90-91).

The Committee's first June 26 witness was Maxwell C. Raddock (R. 16), who, after answering questions relating to the publication of "The Portrait of an American Labor Leader, William L. Hutcheson" and related matters (R. 17), declined to answer, on the grounds of self-incrimination, whether he knew Metro Holovachka, the county prosecutor at Lake County, Indiana; whether certain matters

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[2] The maximum penalty under Indiana law, for the felony in each count, was imprisonment for not less than two nor more than fourteen years, plus a fine. Burns' Indiana Criminal Code, §§ 10-601, 10-1101.

dealing with the purchase and sale of land in Indiana were being presented to a grand jury in Lake County; whether he knew Michael Sawochka as secretary-treasurer of Local 142 of the Teamsters in Gary, Indiana; and whether Mr. James Hoffa's help or assistance had been requested in connection with possible indictments dealing with the purchase and sale of land in Indiana (R. 18-21).

E. Committee Counsel's "background" statement

Thereupon the following explanation was made to the witness Raddock, and to all present including petitioner, by the Counsel and Chairman of the Committee (R. 21-24):

> "Mr. Kennedy. Mr. Chairman, could I read a short statement in background of this situation to clarify it?
>
> "The Chairman. So that there will be no doubt as to the subject matter being inquired into, and so that the witness may be so apprised, you may read some background information, not as testimony, but upon which to predicate further testimony.
>
> "Mr. Kennedy. In May and June of 1957, hearings were held before the Gore committee, concerning the purchase of land along a proposed right-of-way in Lake County, Ind., by certain individuals, including Frank Chapman, who was the general treasurer of the Carpenters International.
>
> "The Chairman. Is that right-of-way for a highway for a public highway?
>
> "Mr. Kennedy. That is correct. And the purchase that was being looked into was the purchase that was made in June of 1956.
>
> "Involved in this situation, along with Chapman, were Maurice A. Hutcheson, general president of the Carpenters, and O. William Blaier, second general vice president. Within several months after the purchase of the land it was sold to the State for the highway at a $78,000 profit on a $20,000 investment.
>
> "Part of the proceeds of the profits were allegedly paid by Chapman to the Indiana Highway Commission, and a deputy in the right-of-way office of the Indiana Highway Department.

"Hutcheson, Blaier, and Chapman invoked the fifth amendment before the Gore committee on this matter. This whole situation was presented to the Lake County grand jury by Metro Holovachka, the county prosecutor, comencing July 22, 1957.

"The grand jury recessed on July 23, and thereafter considered the matter for an additional day on August 19, 1957.

• • • •

"Hutcheson, Blaier and Chapman did not appear before the grand jury because Holovachka did not subpoena them, or could not. On August 20, 1957, Holovachka announced that no indictments of the Carpenters' officials as well as others involved would be forthcoming because 'A lack of jurisdiction.' Moreover, through an attorney whom Holovachka refused to identify, the Carpenters' officials made restitution to the State of the $78,000 profit made on the deal.

"Subsequently, Mr. Chairman, these three individuals as well as certain of the State officials, were indicted in an adjoining county, Marion County, in the State of Indiana on this deal.

"We are inquiring into the situation in connection with the presentation before the grand jury in Lake County, Ind.; the intervention by certain union officials into that matter, and the part that was played by Mr. Hutcheson himself, Mr. Sawochka, the secretary-treasurer of local 142 of the Teamsters, and Mr. James Hoffa, the international president of the Teamsters.

"The Chairman. Is there some information that either union funds were used in the course of these transactions or that the influence of official positions of high union officials was used in connection with this illegal operation?

"Mr. Kennedy. We have information along both lines, Mr. Chairman, not only the influence but also in connection with the expenditure of union funds.

• • • •

"The Chairman. That is the interest of this committee in a transaction of this kind or alleged transaction of this kind, to ascertain again whether the funds or dues money of union members is being misappropriated, improperly spent, or whether officials in unions are using their positions to intimidate, coerce, or in any

way illegally promote transactions where the public interest is involved.

"Mr. Raddock, you have heard a background statement. That is not evidence, but it is information, however, which the committee has, regarding this matter out there. The committee is undertaking to inquire into this in pursuit of the mandate given to it by the resolution creating the committee."

Following this explanation, Raddock refused, on the grounds of self-incrimination, to answer a series of questions concerning the allegedly improper efforts to prevent the bringing of the indictment in Lake County, Indiana (R. 24-38). These questions included whether Raddock on August 11, 1957, registered at the Drake Hotel in Chicago along with petitioner (R. 27-28, 33); whether Raddock's expenses for the trip and services rendered were paid by the Carpenters' union (R. 29-31); whether Raddock contacted James Hoffa of the Teamsters while Raddock was in Chicago (R. 33); whether Hoffa agreed to contact one Sawochka, the local Teamster official in Gary, Indiana (R. 33); whether Raddock then went to Gary, Indiana, and consulted with Sawochka and Joseph P. Sullivan, attorney for Teamster Local 142, about having no indictments against petitioner, Chapman and Blaier (R. 35-36); whether Raddock discussed the matter with Charles Johnson, vice president of the Carpenters (R. 37); whether Raddock played a part in the restitution of the $78,000 to the State of Indiana (R. 38); and whether Raddock was employed to fix the case in Gary, Indiana (R. 38).

F. Committee Chairman's comments on Raddock's claim of privilege

In the course of the witness Raddock's questioning, the Chairman of the Committee made the following comments regarding that witness's invocation of his privilege against self-incrimination (R. 19-20, 23-24, 24-25, 31-32, 38-39):

"The Chairman. Mr. Raddock, you have answered very freely all questions up to now, and answered some

of them at considerable length. I don't know what is to be implied from this immediate change of attitude. It is your privilege to take the Fifth Amendment if you honestly believe that answering the questions truthfully might tend to incriminate you.

• • • •

"Mr. Raddock, you have heard a background statement. That is not evidence, but it is information, however, which the committee has, regarding this matter out there. The committee is undertaking to inquire into this in pursuit of the mandate given to it by the resolution creating the committee.

"It is our duty to inquire into it. If you have information, and apparently you have because you say if you give it, it might tend to incriminate you, may I say to you that you have an opportunity here now, if you have information that will throw any light on this, you have an opportunity now to render a service to your country, to union members, to honest, decent unionism as such, and also to law and order in this country, if you will cooperate and give the information and the facts you have which are within your knowledge.

• • • •

"The Chairman. Well, I believe you said you loved your country above everything else. I was hoping that your cooperation would clearly confirm that statement. You have the right, of course, if you honestly believe that if you told the truth the truth might tend to incriminate you, you have the right under the laws of this country, under its constitution to withhold the facts that you have.

"I was hoping it wasn't that serious. I am really disappointed that it is. I was hopeful that you could cooperate with us and help us get leads here and evidence that would help to expose those who may have engaged in criminal acts, those who may have abused their position and their authority and as union officials, and who may have brought discredit upon one of the large international unions of this country, and that you might be helpful in securing the measure of law enforcement that helps to preserve this country that you profess to love.

• • • •

"The Chairman. Mr. Raddock, you have answered other questions regarding the work you did for the same international union, and stated that you got paid for it, and got your expenses for it.

"I assume, then, of course, where you answered with respect to that, there was nothing connected with your employment that might tend to incriminate you, or cause you to be a witness against yourself by answering truthfully about it.

"Now we reach this point where you are apparently on a mission for this international union, and your expenses are being paid. Now you state, if I understand you correctly, that if you answered truthfully regarding this trip, this mission, the services rendered, and accepting expenses for it, that if you answered truthfully, the truth might tend to incriminate you; is that correct?

"(The witness conferred with his counsel.)

"Mr. Raddock. Yes, sir, Senator.

"The Chairman. Well, that is a very sad situation. Here is a great international union. The officers have tremendous responsibility. They are in a position of great and sacred trust, I would say, to literally thousands upon thousands of working people in this country who are members of that union, who support it. Here we have now expenditures being made over the authority or authorization of the president of that great international union, expenses being paid for services, I assume, rendered, where the one who performs the service and who receives the expenses states that if he told the truth about it, that is, as to the kind of service he was to perform, or what he was employed to do, or having accepted and received the expenses incurred in connection with that service, if he told the truth about it, it might tend to incriminate him.

"That cannot help—without being explained, it cannot help but be a reflection upon the management of that union.

"It is those things that has given the country as well as this committee and the Congress grave concern about how some affairs of unions are today being conducted.

"I should hope that you would reconsider and be able to help the committee and give us the truth about it.

"If Mr. Hutcheson, and the services you were engaged in, that you were employed to perform, and the expense that he authorized here and paid out of union funds were for legitimate reasons, I would be hopeful that you would give us an explanation of it.

"Can you do that?

"(The witness conferred with his counsel.)

"Mr. Raddock. Senator, on the advice of counsel, I must respectfully decline to answer on the ground that to do so might tend to make me a witness against myself.

"The Chairman. I am compelled, and I think everyone who listens or who may read this transcript is compelled, to the conclusion that you are being truthful at least about taking the fifth amendment, and that if you did tell the truth, it might tend to incriminate you, and also those of the union who are responsible for and who authorize the services you performed.

• • • •

"The Chairman. You will be recalled again. I just wanted to know whether you wanted to make any statement now in connection with these matters about which you invoked the fifth amendment.

"You will be given another opportunity to testify, but I just wondered now, after the questions have been asked you which carry with them very definite implications that would implicate you in an enterprise or in a project that would be improper insofar as the use of union funds in the judgment of the Chair, at least, I wondered if you wanted to clarify or make any statement in your own interest or to help the efforts of the committee with respect to the matter about which you have been interrogated here this morning."

G. Testimony of other June 26 witnesses

After Raddock left the stand, the Committee on the same day—June 26—called Sawochka, Johnson, Sullivan, and Blaier, all of whom were presented and interrogated as playing parts in the highway "deal" already set forth in

the "background statement," particularly "in the restitution of the $78,000 to the State of Indiana" (R. 38, 51). Sawochka (R. 45-52) and Johnson (R. 54-56) invoked their privilege against self-incrimination, while Sullivan, who admitted that he was the attorney who presented the restitution check to the State of Indiana (R. 70), refused on grounds of the attorney-client privilege to identify the person who drew the check (R. 70-71), and invoked the same privilege in respect of numerous other questions (R. 56-76). Sullivan did not know the present petitioner (R. 71).

Blaier, the final June 26 witness, was accompanied by Howard Travis, Esq., who, as has been indicated, *supra*, page 7, was also defense counsel for him and the petitioner in the matter of the Indiana indictment (R. 76-77).

Mr. Travis urged that interrogation of Blaier, the Second General Vice-President of the United Brotherhood of Carpenters and Joiners of America (R. 76, 81), as to the subject matter of the "background statement" would involve his Indiana indictment and be an intervention by the Committee in its prosecution. The Chairman of the Committee thereupon announced the following standards to govern the interrogation (R. 77-78):

> "The Chairman. All I can say is that we will go into anything within the jurisdiction of this committee, about which we think the witness may have information, and can give testimony regarding except where, even though the committee may be interested in it, the matter may be covered by our jurisdiction, and would be clearly within the purview of these hearings, if the witness is under indictment for the offense for which he was indicted, we shall not interrogate him about that.
>
> "If he feels that might jeopardize his defense, we recognize that, where he is under indictment he should not be compelled to be a witness against himself on the subject matter involved in the indictment. That rule or policy will be observed.
>
> "Proceed with the interrogation and we can rule upon anything that comes up."

When, notwithstanding this assurance by the Committee of the "rule or policy" to be observed by it, it continued to press Blaier as to the presupposed conspiracy to prevent indictment of himself and the petitioner in the highway matter, and the indictment itself had been marked as Committee Exhibit 47 (R. 79, 87-88, 182-189), Mr. Travis consistently protested. For example (R. 78):

> "The charge is a conspiracy charge, and the indictment charge is a conspiracy charge, and it is very clear under Indiana criminal law that events which happen after the specific event charged in the indictment might be used by the prosecution to show the origin and continuance of the indictment, to relate it back.
>
> "The matters that have been inquired about today in the hearing relate, to my mind, directly to the matters, to the transaction, for which he is indicted."

Again (R. 82):

> "Mr. Travis. If the inquiry will relate to transactions in Lake County, Ind., the witness will be advised by me that he cannot answer the questions, because he is charged with conspiracy under indictment, and anything with regard to that, restitution or otherwise, is directly related, and could be used by the prosecution, possibly, against him."

And again (R. 85):

> "Mr. Travis. No, sir. The indictment is in two counts. One is a conspiracy to commit a felony, to wit, bribery of a State official. I wish to say at this time that it is my responsibility as attorney for this gentleman in the case under which he is under indictment, to advise him whether or not I think the questions which Mr. Kennedy is asking and is going to ask with regard to Lake County could be used in that prosecution, and my responsibility will be carried out by advising the witness to answer no questions."

In overruling these protests the Chairman of the Committee nevertheless said (R. 86):

> "The Chairman. It may be a borderline case. I am unable to determine it at this time.
>
> • • • •
>
> "The Chairman. The Chair finds that the indictment is for alleged actions in 1956 that the crimes charged under the indictment took place.
>
> "This is something like a year later. If you want to exercise your privilege, that is all right. But I do not know how this could be related to an offense that was committed a year earlier. It could be by indirection, but certainly not directly, if the indictment is anywhere near accurate.
>
> "Mr. Travis. Indirection, Mr. Chairman, can be just as harmful as a direct matter."

Blaier accordingly, on the advice of his counsel, refused to answer "because it might aid the prosecution in the case in which I am under indictment" (R. 82, 83, 84, 86).

H. Petitioner's interrogation

Petitioner's public interrogation on the highway "deal" followed on the next day, June 27 (R. 90).

Petitioner was accompanied by his counsel, Howard Travis, Esq. (R. 90), who at the outset (R. 91-92) advised the Committee that petitioner would not claim the Fifth Amendment's privilege against self-incrimination but would claim the rights of a man under indictment, "including the due-process-of-law clause, that he must be tried only before the court where the indictment is pending." Mr. Travis further said (R. 92):

> "I submit, therefore, that any inquiry by this committee into or about any of the facts related to or which might be related to such indictment and the transactions recited therein, however remote the same may be, and whether occurring before or after the transaction recited in the indictment, or as to any matter which might be attempted to be used in furtherance

> of the prosecution thereof, would be improper, without appropriate pertinency and outside the scope of the investigation which this committee is authorized to make."

Objections similar in tenor were voiced by Mr. Travis throughout petitioner's questioning (R. 128, 132-134), which reflected by dates, names, places and data the "background information" stated by the Committee the day before as "the subject matter being inquired into" (R. 21).

Thus, petitioner was asked to state how long he had known the witness Raddock (R. 96). Mr. Travis intervened, asking if the questioning was going to be about "the book rather than the Lake County transactions" (R. 96). In reply, counsel for the Committee stated (R. 96):

> "Mr. Raddock is not under indictment in any conspiracy with Mr. Hutcheson. I am just going to ask Mr. Hutcheson about his relationship with Mr. Raddock."

The Chairman added (R. 96-97):

> "* * * I have gone into the matter a little to ascertain where the line of questioning may go. He will be interrogated regarding the book. He will also be interrogated regarding the use of union funds in a project which, on the face of it at least, appears to have the objective which was to obstruct justice.
>
> "So he will be interrogated about those things. As to any act covered in the indictment for the period of which the crime is alleged in the indictment, he will not be interrogated. But the matters that he will be interrogated about are subsequent to the time that the offense in the indictment was charged."

Petitioner was then questioned about the book (R. 97-119). He admitted that a total of $310,000 was paid from the general fund of the Carpenters' Union for production of the book (R. 113), but stated that "this whole transaction has been handled by our general executive board,

and because of my relationship[3] I have been reluctant to get into it" (R. 107).

I. Petitioner's refusal to answer and his reasons for such refusal

Petitioner was next asked a series of questions with respect to $83,000 paid to Raddock in connection with the Carpenters' 75th anniversary dinner (R. 119-120), all of which he answered. On further questioning, he denied that Raddock had ever performed any illegal act on behalf of the union (R. 123). He was then asked the question which forms the basis for Count One in the indictment, namely, whether Raddock had received from the union payment for acts performed on behalf of appellant as an individual (R. 123). After conferring with his counsel, petitioner stated (R. 123):

> "On the advice of counsel, I refuse to answer the question on the ground that it relates solely to a personal matter, not pertinent to any activity which this committee is authorized to investigate, and also it relates or might be claimed to relate to or aid the prosecution in the case in which I am under indictment, and thus be in denial of due process of law."

On direction to answer, he was given the following explanation by Senator Ervin and the Chairman of the Committee (R. 124):

> "Senator Ervin. Mr. Chairman, I just wanted to suggest that in my judgment there is no validity in the first point of his objection. The question does not relate to a purely personal matter. It relates to the use of union funds, and certainly this committee has authority to investigate the use of union funds.
>
> "The Chairman. For that reason, the Chair ordered the witness to answer the question, because we certainly have jurisdiction to interrogate about the expenditure of union funds, and the question was predicated upon the payment out of union funds, which might be an improper expenditure of union funds to perform a per-

[3] I.e., that petitioner is the son of William L. Hutcheson (R. 94), the subject of the book.

sonal service for the witness. I think that the question is legitimate. Its objective is obvious, to ascertain the conduct of this witness with respect to his position in a fiduciary capacity as trustee of union money. The question stands."

For the reasons previously given petitioner refused to answer the question, and thereafter refused to answer the questions forming the basis for Counts Two through Six of the indictment (R. 126-137). These questions were:

"Have you, unrelated to this offense charged in the indictment now against you, engaged the services of Mr. Raddock, and have you paid him out of union funds for the performance of those services, to aid and assist you in avoiding or preventing an indictment from being found against you or for being criminally prosecuted for any other offense other than that mentioned in this indictment? (Count Two; R. 5, 126).

"Did you engage the services of Mr. Raddock and pay him for those services out of union funds, to contact, either directly or indirectly, the county prosecuting attorney, Mr. Holovachka, given name Metro, in Lake County, Gary, Ind.? (Count Three; R. 5, 126).

"Have you paid Max C. Raddock out of union funds for personal services rendered to you at any time within the past 5 years? (Count Four; R. 5, 129).

"Have you used union funds to pay Max C. Raddock for any services rendered to you personally, wholly disassociated from any matters out of which the pending criminal charge arose? (Count Five; R. 5, 129).

"Was he [Mr. Raddock] there [in Chicago] on union business for which the union had the responsibility for payment? (Count Six; R. 5, 136)."

At one point while the questions set out above were being put, Mr. Travis said (R. 128):

"Mr. Chairman, I would like to direct the committee's attention at this time to the fact that the refusal goes over and above the jurisdictional question of the committee, and it goes into a matter which—when the statement that the Chair just made refers to the expenditure of union funds for personal matters—have

also involved Maxwell Raddock, and in the prior testimony the committee has shown that that relates to this Lake County transaction, for which Mr. Hutcheson is under indictment."

Following petitioner's refusal to answer the last question quoted, the Committee heard testimony from Paul J. Tierney, an assistant counsel of the Committee, who testified that, on the basis of an air travel card issued to Raddock by the Carpenters' Union, the Union paid Raddock for a round trip ticket to Chicago from New York on August 11, 1957 (R. 139-140). A hotel bill submitted at this time also disclosed that the Carpenters' Union paid Raddock's hotel expenses at the Drake Hotel in Chicago from August 11 through August 17, a total of $147.10 (R. 140).

Petitioner then resumed the stand, and, again for the reasons previously stated, refused to answer the questions forming the remaining counts in the indictment, to wit:

"Was Mr. Raddock paid on that trip, the expenses of his paid by union funds while he was on union business? (Count Seven; R. 5, 140).

"You were out in Chicago at the same time? (Count Eight; R. 6, 146).

"Were your expenses on that Chicago trip paid by the union? (Count Nine; R. 6, 146).

"Were you out in Chicago at that time on union business? (Count Ten; R. 6, 147).

"Do you know Mr. James Hoffa? (Count Eleven; R. 6, 148).

"Did you make an arrangment with Mr. Hoffa that he was to perform tasks for you in return for your support on the question of his being ousted from the A.F.L.-CIO? (Count Twelve; R. 6, 148).

"Isn't it a fact that you telephoned Mr. Hoffa from your hotel in Chicago on August 12, 1957? (Count Thirteen; R. 6, 148).

"And wasn't that telephone call in fact paid out of union funds, the telephone call that you made to him on August 12? (Count Fourteen; R. 6, 149).

"Do you also know Mr. Sawochka of the Brotherhood of Teamsters? (Count Fifteen; R. 6, 149).

"Isn't it a fact that you had Mr. Plymate who is a representative of the brotherhood, telephone, and your secretary telephone, Mr. Sawochka from your room on August 13, 1957? (Count Sixteen; R. 6, 149).

"And isn't it a fact that that telephone bill and that telephone call was paid out of union funds? (Count Seventeen; R. 7, 150).

"Did you have any business with local 142 of the Teamsters in Gary, Ind.? (Count Eighteen; R. 7, 151)."

During the course of the questioning, petitioner reaffirmed that he was not invoking the Fifth Amendment privilege against self-incrimination (R. 125, 127, 130, 135, 146). At one point this colloquy took place (R. 130-131):

"Senator Ervin. What I am asking you is this. You say you are not invoking the privilege of self-incrimination; is that right?

"Mr. Hutcheson. That's right.

"Senator Ervin. And you do not contend that due process of law, in and of itself, includes a privilege against self-incrimination?

(Witness conferred with counsel.)

"Mr. Hutcheson. Sir, that is a legal question. I am not qualified to answer."

At another point petitioner said (R. 132),

"Sir, I have been advised that certain matters related to this subject might be claimed to relate to or aid the prosecution of the case in which I am under indictment and, thus, be in denial of due process of law."

Toward the close of the interrogation, petitioner admitted, in response to an inquiry by a member of the Committee, that he was concerned that there should be no actual or apparent violation on his part of the AFL-CIO code of ethics concerning union officials who invoke the Fifth Amendment when asked about their official conduct (R. 147).

Petitioner admitted understanding that he was interrogated about union funds (R. 127), and on several occasions during the questioning, he was told by members of the Committee that their inquiries were directed to union matters, and did not relate to anything involved in the pending indictment (R. 125, 128, 132). This evoked the following comments from his counsel, Mr. Travis (R. 133-134):

> "I hope you realize, Senator, it is a very delicate question for me and a very heavy responsibility. But, knowing what I do about the matter under which he is indicted, I have to exercise my judgment as best I can. There are certain areas that I have determined I cannot safely allow Mr. Hutcheson to testify, and which I think would violate his fundamental rights if he was forced to.
>
> • • • •
>
> "Of course, I think any man under indictmental guaranties of due process of law should not be questioned in any form concerning any matter that might remotely in any way aid the prosecution in that case.
>
> "Naturally, this committee can't sit as prosecutors or judges or jurors in that matter under which Mr. Hutcheson is indicted.
>
> "I think there are fundamental guarantees to any person under indictment that that matter shall be tried solely in the forum where the indictment lies."

J. Committee Chairman's closing public statement

Following the close of its interrogation of the petitioner, the Committee Chairman made a public statement, the pertinent portions of which are as follows (R. 152, 153-154):

> "The Chairman. The chairman will issue the following statement:
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> • • • •
>
> "The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Unions, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.

"All the facts regarding this conspiracy undoubtedly have not been developed by the committee.

"Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

K. Petitioner's Federal indictment and trial

Petitioner's failure to answer was reported by the Committee to the Senate (S. Rep. 2265, 85th Cong., 2d sess.), and certified by the President of the Senate to the United States Attorney (S. Res. 362, 85th Cong., 2d sess.; R. 181). The present indictment (R. 4-7) followed.

The trial consisted of readings by the prosecution witness, Paul J. Tierney, Assistant Counsel to the Committee, from the transcript of proceedings before the Committee, supplemented by some oral testimony and portions of the Committee's Second Interim Report, plus testimony by the Committee Chairman; the latter testified as follows (R. 165):

"Q. As Chairman of this Committee, did you have any intention when you said, what I have read several times and I am sure both sides know what it is and it is in the record, did you have any intention of encouraging or assisting the State of Indiana in conducting a further investigation of this matter looking towards a state prosecution?

• • • •

"The Witness. This was the conclusion of the hearings in this particular investigation. At the conclusion, I made this brief statement that is in the record.

"Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed.

Our legislative purpose is to search out and find if crime has been committed.

"My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them."

Meanwhile the Government had offered in evidence as Govt. Ex. 6 (R. 159-160) the Committee's Second Interim Report (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess., dated October 23, 1959). After extensive colloquies and a motion to strike numerous portions of that report (R. 160-162, 166-173), the offer was restricted so that only certain portions were admitted in evidence (R. 170-173).[4] The following excerpts from the pages in evidence are pertinent here:

"MAXWELL C. RADDOCK AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA" (P. 517.)

• • • •

"Among the specific points pursued by the committee were:" (P. 517.)

• • • •

"3. Certain events preceding the indictment of General President Maurice Hutcheson, Second Vice President O. William Blaier, and Treasurer Frank Chapman for conspiracy to bribe an Indiana State highway official in connection with their purchase and resale of a piece of land along which a superhighway was to be built. Of particular interest to the committee in this affair was the purchase for $40,000 by the Teamsters Union, the Carpenters' warm friend, of a piece of land assessed at about $3,800. One of the beneficiaries of

[4] Namely: Pages 517-518, beginning "Maxwell C. Raddock and the United Brotherhood of Carpenters and Joiners of America"; page 518, topic 3; page 518, last paragraph through first 3 lines on page 519; page 554, beginning "The second Raddock activity in 1957" to and including the first paragraph on page 561; page 590, beginning with "Findings", to and including the first 3 full paragraphs on page 592.

a parallel transaction by the sellers of this property was the prosecuting attorney of Lake County, Ind., Metro Holovachka, who the same month had announced that no indictment of the three Carpenter officials would be forthcoming because of a 'lack of jurisdiction' (the indictment was subsequently returned in adjoining Marion County)." (P. 518.)

• • • •

"The second Raddock activity in 1957 which did not appear to come within the purview of his editing and publishing efforts was one about which, when questioned by the committee, he grew markedly taciturn by contrast with his earlier volubility, resorting, indeed, to the fifth amendment in response to the queries leveled at him on the subject.

"Of concern to the committee in this sphere was the role Raddock played in certain events preceding the indictment in Marion County, Ind., of three top Carpenter officials—President Hutcheson, Second Vice President Blaier, and Treasurer Chapman.

"As detailed by Committee Counsel Kennedy, the developments leading up to the indictment were as follows: In June 1956 Hutcheson, Blaier, and Chapman bought for $20,000 a piece of land in Lake County, Ind., along the proposed right-of-way of the new Tri-State Expressway, selling it several months later to the State of Indiana at a $78,000 profit, part of which allegedly was paid by Chapman to a deputy in the State highway department's right-of-way office.

"Following hearings into this transaction by the Gore subcommittee May 1957, the entire matter was presented to the Lake County grand jury, on July 22, 1957, by County Prosecutor Metro Holovachka. The prosecutor either did not or could not subpena the three Carpenter officials to appear before this grand jury, and on August 20, 1957, announced that no indictments would be forthcoming because of a 'lack of jurisdiction,' and that the Carpenter officials would make restitution to the State of the $78,000. This was done through an attorney Holovachka refused to name. Subsequently, however, the three officials were indicted in adjoining Marion County for conspiring to bribe the highway department employee.

"The committee's interest in this entire situation was primarily focused on Holovachka's presentation of the case to the Lake County grand jury, and on the question of whether union funds and the influence of union officials, chiefly Teamsters President James Hoffa and Michael Sawochka, secretary-treasurer of Teamster Local 142 in Gary, Ind., were used to prevent the indictment of the Carpenter trio in Lake County." (P. 554.)

• • • •

"FINDINGS—MAXWELL C. RADDOCK AND THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA" (P. 590.)

• • • •

"From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the treasurer, Frank Chapman.

"A series of telephone calls between Raddock and Michael Sawochka, a powerful Teamsters Union official in Lake County, Ind., immediately after Hutcheson had been in touch with James R. Hoffa, was followed in turn by contacts between Sawochka and the former Lake County prosecutor, Metro M. Holovachka. The fact that these telephonic contacts preceded Holovachka's announcement that no indictments would be brought against the Carpenters Union officials in Lake County must, in the light of the evidence, be considered more than mere coincidence. It is significant to to the committee that the voluble Mr. Raddock lapsed into the fifth amendment when confronted with questions on this subject, as did Teamster official Sawochka.

"Holovachka's subsequent profiting from a parallel transaction, in which the Teamsters Union headed by Sawochka was also involved, lends further credence to the charge of Raddock's use as a fixer." (P. 592.)

L. The rulings below

At the close of the trial Judge Morris rendered the following oral decision (R. 174):

> "The Court. And I say it [the Committee] did have the right to ask the questions and the man is in contempt of court in not answering them. That is my answer. Any other answer in this jurisdiction has got to come from the Court of Appeals.
>
> "The Sacher case, Mr. Hitz doesn't seem to think it is in point with the facts in this case. I disagree with him. I think it is absolutely dispostive of what is involved in this case and I think it makes it abundantly clear that the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress.
>
> "That is my ruling and that is what I hold.
>
> "You can prepare a decree accordingly.
>
> "I find the defendant guilty of all counts of the indictment * * *."

Petitioner was sentenced to six months' imprisonment and to pay a fine of $500 (R. 189-190). The Court of Appeals affirmed by memorandum order (R. 191-192) and denied a timely petition for rehearing (R. 192), after which this Court granted certiorari (R. 193).

SUMMARY OF ARGUMENT

I. A. The matters about which the Committee interrogated petitioner, whose refusal to answer forms the basis of the present Federal prosecution, relate to events taking place in August 1957, after the date of the acts alleged in the Indiana indictment, but before that indictment was returned, and all related to allegedly improper efforts on petitioner's part to prevent an indictment being found against him. Consequently, under Indiana law, which makes admissible any statement or conduct of a person indicating a consciousness of guilt, all the matters about which peti-

tioner was interrogated would have been admissible against him at the trial of his Indiana indictment. Petitioner and his counsel were therefore right in telling the Committee that answers to the questions in issue would have injured petitioner, and the Committee and its counsel, who contended that the questions had no bearing on the pending State indictment, were demonstrably in error.

Moreover, if petitioner had invoked a privilege against self-incrimination in respect of the questions now in issue, that claim of privilege could have been used against him at the Indiana trial had he there testified, as indeed the Government has admitted, and thus such a claim would have circumscribed his freedom of action at that trial.

Actually, by analogy to the link-in-the-chain cases (e.g. *Hoffman* v. *United States*, 341 U. S. 479; *Overman* v. *State*, 194 Ind. 483, 143 N. E. 604), it is sufficient to show that the answers *might* be dangerous because injurious disclosure *could* result. And, in view of the circumstance that the scope of 18 U. S. C. § 3486 has been materially changed since it was considered in *Adams* v. *Maryland*, 347 U. S. 179, the Committee would not have been able to grant petitioner immunity had he been willing to answer.

B. We submit that it is a violation of due process of law for a legislative committee to pretry a pending criminal case—which is precisely what the Committee did here. So far as we are aware, the present case represents the first instance in which a Congressional committee has actually interrogated a witness under indictment in respect of matters bearing on that indictment, and then cited him for contempt of Congress because he refused thus to assist the prosecution at his impending trial under that indictment. Petitioner's appearance before this Committee was, in substance and effect, a legislative trial, at which the Committee framed the charges, prosecuted petitioner by cross-examining him, fashioned its own procedures, laid down its own rules of law, proclaimed guilt, exhorted law enforcement

officers to "further exposure", publicly rendered a verdict against petitioner as he was leaving the stand, and finally entered a solemn judgment of guilt upon him in its Second Interim Report. Whether or not this was a bill of attainder or a procedure partaking of its nature, it was assuredly a denial of due process. *Kilbourn* v. *Thompson*, 103 U. S. 168, 182.

Here the Committee itself—not newspapers, intent on circulation, but a Committee of the Senate—poisoned the outcome of petitioner's pending trial. Cf. *Delaney* v. *United States*, 199 F. 2d 107 (C. A. 1); *Beck* v. *Washington*, pending on writ of certiorari, No. 40, this Term. Nor is *Sinclair* v. *United States*, 279 U. S. 263, authority for the Committee's action, since there there was no pending criminal indictment, but only a pending civil action.

C. (1) Petitioner was virtually certain to incriminate himself no matter what he did: if he answered, he might well have helped the pending prosecution; if he answered falsely, he would have committed perjury; and since he did not answer at all he has been convicted of contempt of Congress. Such a procedure is so fundamentaly unfair as to involve a deprivation of due process of law, as has indeed been held where the risk of self-incrimination involved a Federal crime. *Aiuppa* v. *United States*, 201 F. 2d 287, 300 (C. A. 6).

(2) A Federal agency cannot, consistently with fundamental fairness, force a citizen into jeopardy of a State jail.

United States v. *Murdock*, 284 U. S. 141, which indeed held the contrary (although in a situation where the witness had not yet been prosecuted by the State), rested on a double misreading of English law. First, where the danger of self-incrimination under foreign law is real, not speculative, and duly proved, English law allows the witness to invoke it. *United States* v. *McRae*, L. R. 4 Eq. 327, affirmed in part, L. R. 3 Ch. App. 79. Second, a State of the Union is not a foreign country so far as the United States is con-

cerned; cf. *Testa* v. *Katt*, 330 U. S. 386. And, third, an increasing number of States, by decision or statute, are permitting State witnesses to invoke the danger of self-incrimination under Federal law.

Hale v. *Henkel*, 201 U. S. 43, which is also to the contrary in a pre-State-indictment situation, rested on the same misreading of English law, and moreover misinterpreted *United States* v. *Saline Bank*, 1 Pet. 100, where Chief Justice Marshall squarely held that, in a suit by the United States in a Federal court to recover a money judgment, the defendants would not be required to make any discovery that would expose them to penalties under State law. The statement in *Hale* v. *Henkel*, 201 U. S. at 70, that in the *Saline Bank* case "the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law", is flatly contradicted by the actual manuscript record of the *Saline Bank* case: there was no prosecution, and the complaint did not mention the State statute, but simply sought a money judgment on the footing that the defendants had conspired to defraud the United States.

(3) We urge a reaffirmation of the pristine and sturdy Federalism of the Great Chief Justice, and a holding that a procedure under which a witness is virtually bound to go to jail whatever he does violates fundamental principles of fairness. While this Court has never hesitated to reconsider its constitutional pronouncements, see Brandeis, J., in *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 405, 406-413, what is sought here is not a new departure but rather a return to first principles; and certainly *Twining* v. *New Jersey*, 211 U. S. 78, did not irrevocably fix for all time the scope of due process of law in the area of self-incrimination, any more than either *Weeks* v. *United States*, 232 U. S. 383, or *Wolf* v. *Colorado*, 338 U. S. 25, represented the last word on the scope of due process of law in respect of unlawful searches and seizures. Cf. *Mapp* v. *Ohio*, 367 U. S. 643.

(4) Upholding petitioner's contention will not in any sense hamper legitimate legislative inquiries. If Congress reenacts 18 U. S. C. § 3486 as it stood when *Adams* v. *Maryland*, 347 U. S. 179, was decided, the witness will have complete immunity in all courts, and its committees will again be free to require answers without reference to possible State prosecutions. Cf. *Reina* v. *United States*, 364 U. S. 507.

(5) In any event, the demonstrable fact that the Committee here sought to assist and encourage—indeed, to instigate—State prosecutions, plainly rendered improper the questions it asked. Here the analogy is the former series of cases on illegal searches that involved collaboration between State and Federal law enforcement officers (*Byars* v. *United States*, 273 U. S. 28; *Gambino* v. *United States*, 275 U. S. 310; *Lustig* v. *United States*, 338 U. S. 74), an analogy which has already been recognized in the present field. See *Feldman* v. *United States*, 322 U. S. 487, 494; *Knapp* v. *Schweitzer*, 357 U. S. 371, 380. Since on this record the Federal Committee acted as an instrument of State prosecution or investigation, its questions were improper on any view.

If petitioner is right on his due process point, then, obviously, proof that the questions asked were pertinent is immaterial. *Barenblatt* v. *United States*, 360 U. S. 109, 112.

II. A. The present record shows that the Committee frankly and openly declared that its purpose was "further exposure" and "to search out and find if crime has been committed". Unlike the situations presented by *Wilkinson* v. *United States*, 365 U. S. 399, and *Watkins* v. *United States*, 354 U. S. 178, 200, in this case the resolutions authorizing the present Committee to proceed directed it in terms "to conduct an investigation and study of the extent to which criminal * * * practices or activities are, or have been, engaged in". Thus here the Committee

was specifically directed to undertake the functions of a grand jury.

B. The Committee's Second Interim Report, which is a part of the present record, demonstrates that petitioner's answers were not needed for fact-finding purposes. Actually, the Committee counsel's background statement shows that the Committee had already completed its fact-finding before petitioner was ever called. All that the Committee lacked were admissions, out of his own mouth, that the allegations against him were true. That is not fact-finding; that is simply exposure for exposure's sake.

C. Broad though the Congressional power of investigation undoubtedly is, it is still subject to limitations, notably that Congress cannot inquire into matters that are within the exclusive province of the Judiciary or Executive. *Barenblatt* v. *United States*, 360 U. S. 109, 111-112; *Watkins* v. *United States*, 354 U. S. 178, 187; *Quinn* v. *United States*, 349 U. S. 155, 161; *Tenney* v. *Brandhove*, 341 U. S. 367, 378. Here, as has been seen, the Committee undertook functions that belonged, not to Congress or its committees, but only to law enforcement officers, prosecutors, grand juries, and the judiciary. Accordingly, petitioner could rightfully refuse to answer.

III. A. A witness before a legislative committee, like a witness before a court, may invoke any privilege recognized by law as a ground for refusing to answer questions put to him. *Slagle* v. *Ohio*, 366 U. S. 259, 265. Certainly if the district judge here was right in ruling that petitioner's only relief was the Fifth Amendment's guarantee against self-incrimination, then this Court would not have needed to devote ten pages in *Barenblatt* v. *United States*, 360 U. S. 109, 125-134, to considering the merits of the First Amendment claim there involved. In any event, the law is plain that all of the Bill of Rights is available (*Barenblatt* v. *United States*, 360 U. S. 109, 112; *Watkins* v. *United States*, 354 U. S. 178, 188, 197; *Quinn* v. *United*

States, 349 U. S. 155, 161), and that necessarily includes the due process clause of the Fifth Amendment invoked by this petitioner.

B. Where, as here, the questions involved a deprivation of due process of law, the witness most assuredly is not required to place his refusal on only the ground that would aid the prosecution in a criminal case in which he is already under indictment; as has been seen, petitioner's invocation of the privilege against self-incrimination could have been used against him had he later testified at his Indiana trial, a circumstance that necessarily would have limited his freedom of action there.

It is not necessary to speculate whether, in the face of *United States* v. *Murdock*, 284 U. S. 141, the Committee would have permitted petitioner to claim the privilege against self-incrimination in respect of the pending State indictment, as assuredly it permitted other witnesses to do, for the reason that, in the Committee Chairman's expressed view, such a claim was tantamount to an admission of guilt. That view, repeatedly expressed, runs counter to what this Court had previously held regarding the effect properly to be given to an invocation of that privilege. *Emspak* v. *United States*, 349 U. S. 190, 195; *Ullmann* v. *United States*, 350 U. S. 422; *Slochower* v. *Board of Education*, 350 U. S. 551, 557-558.

C. Petitioner's reliance on the due process clause is not an afterthought; it was specifically and repeatedly made throughout the hearing. He and his counsel contended throughout that answers to the questions now in issue would hurt him at the forthcoming State trial, while the Committee and its counsel insisted that there was no possible relationship between the two. That being so, petitioner is now entirely free to spell out that relationship in detail, and to particularize an objection that was originally summarized with comprehensive clarity.

ARGUMENT

This is a contempt of Congress case involving, not pertinency, not the First Amendment, not the privilege against self-incrimination, but rather the scope of the due process clause of the Fifth Amendment, in a situation where the witness was already under a State indictment, and where the Congressional committee, duly apprised of that fact, none the less insisted on answers that would demonstrably have injured the witness and aided the prosecution in the trial of that indictment.

We argue, therefore, that when any Congressional committee insists on answers that will facilitate the witness's conviction in a pending criminal prosecution, it is denying him due process of law, first, because it is thus improperly —and unlawfully—pretrying a criminal case.

We say, next, that such a procedure is improper because the committee is, inescapably, subjecting the witness to penalties. The circumstance that State rather than Federal penalties are involved seems to us immaterial; we urge that this Court reaffirm the rule laid down by Marshall, C. J., who held in *United States* v. *Saline Bank*, 1 Pet. 100, that a Federal court would not require answers that would subject a party to State penalties. We show, vouching to warranty the manuscript record in that case, that *Hale* v. *Henkel*, 201 U. S. 43, 70, was quite wrong in saying that in *Saline Bank* "the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law." There was no prosecution, and the United States sought, on equitable principles, simply a money judgment. And we show that reaffirmance of Chief Justice Marshall's ruling is particularly appropriate here, where the expressed purpose of the Congressional committee, proved on this record, was to assist and encourage State prosecutions.

We then argue that this Committee, by undertaking to act as a grand jury, assumed powers granted only to the

Executive and the Judiciary, and thus acted beyond its jurisdiction. Its expressed purpose to make "further exposure" and "to search out and find if crime has been committed", purposes consistent with the authorizing resolution that directed it to investigate "the extent to which criminal * * * practices or activities are, or have been engaged in," show that the Committee was not pursuing a legitimate legislative activity when it asked petitioner the questions now under consideration.

Finally, there is the issue whether a witness who refuses to answer questions asked by a legislative committee is restricted to invoking the Fifth Amendment's guarantee against self-incrimination. We show that decisions here have already answered that question in the negative, and that the contrary holdings below are in consequence plainly wrong.

I. IT WAS A VIOLATION OF DUE PROCESS OF LAW FOR THE COMMITTEE TO REQUIRE PETITIONER TO ANSWER QUESTIONS THAT RELATED TO MATTERS COVERED BY THE STATE INDICTMENT AND THAT WOULD HAVE AIDED THE PROSECUTION IN THE TRIAL OF THAT INDICTMENT

A. ANSWERS TO THE QUESTIONS ASKED WOULD HAVE AIDED THE PROSECUTION IN THE TRIAL OF THE PENDING STATE INDICTMENT, AND THE PROSECUTION WOULD SIMILARLY HAVE BEEN AIDED IF PETITIONER HAD REFUSED TO ANSWER ON THE GROUND OF SELF-INCRIMINATION

The State indictment here in question (R. 182-189) was returned in Marion County, Indiana, on February 18, 1958 (R. 91).[1]

The first count (R. 182-186) alleged that petitioner and two others unlawfully conspired to commit a felony, viz.,

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[1] We do not understand this date to be in dispute, even though it only appears in a statement by Mr. Travis (R. 91), counsel for petitioner before the Committee (R. 90). In any event, the record shows that the indictment was handed down during the "January Term, 1958" (R. 182), a fact amply sufficient for our purposes.

to bribe a public officer; the conspiracy was alleged to have commenced on or about May 1, 1956 (R. 182), and the overt acts in pursuance thereof were alleged to have been committed in December 1956 and January 1957 (R. 185). The indictment alleged a continuing conspiracy but named no terminal date.

The second count (R. 186-189) alleged bribery of a named public officer by petitioner and the two other defendants; the date set forth for the offer to bribe was May 1, 1956 (R. 186), that for the actual payment was December 17, 1956 (R. 189). The subject-matter of both counts consisted of grants of rights-of-way over land in Lake County (R. 183, 187) and similar grants in Wayne County (R. 184-185, 187-189), while the locus of both offenses was alleged to be in Marion County (R. 182, 186), all in the State of Indiana.

The matters about which the Committee interrogated petitioner, whose refusal to answer forms the basis of the present Federal prosecution (R. 5-7), relate to events taking place in August 1957, "to aid and assist you in avoiding or preventing an indictment from being found against you" (R. 5, Count Two) in Lake County. The details appear at pp. 554-561 of the Committee's Second Interim Report (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess.), which was Government Exhibit 6 below, and at p. 592 of the same document, where it is said:

> "From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the treasurer, Frank Chapman."

Petitioner and his counsel repeatedly urged on the Committee that to require answers bearing on the alleged effort to head off the Lake County indictment had a bearing on the pending Marion County indictment (R. 93-94, 128,

132, 133, 134; see also R. 78, 81-86).[2] The Committee, which had indicated that it would not inquire directly as to any matters covered by the Marion County indictment (R. 97, 128; see also R. 77-78, 81, 84, 85), repeatedly insisted that the Lake County questions did not bear on and were entirely disassociated from the Marion County indictment (R. 97, 132, 132-133, 134; see also R. 81-82, 84-85, 86).

We can easily demonstrate that petitioner and his counsel were right in contending that answers to the questions about the Lake County transaction would hurt him in the Marion County prosecution, and that the Committee and its counsel were wrong in asserting the contrary.

First. It is settled Indiana law (*Davidson* v. *State*, 205 Ind. 564, 569, 187 N. E. 376, 378) that—

> "Any statement or conduct of a person indicating a consciousness of guilt, where at the time or thereafter he is charged with or suspected of the crime, is admissible as a circumstance against him on trial. Evidence of circumstances, which are part of a person's behavior subsequent to an event with which it is alleged or suspected he is connected with or implicated in, are relevant if the circumstances are such as would be natural and usual, assuming the connection or implication to exist."

That rule has been applied in a variety of circumstances, making admissible in a criminal trial evidence that the

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[2] While acting as counsel for petitioner's co-defendant, Blaier, Mr. Travis had put the matter in these terms (R. 78):

> "The charge is a conspiracy charge, and the indictment charge is a conspiracy charge, and it is very clear under Indiana criminal law that events which happen after the specific event charged in the indictment might be used by the prosecution to show the origin and continuance of the indictment, to relate it back.
>
> "The matters that have been inquired about today in the hearing relate, to my mind, directly to the matters, to the transaction, for which he is indicted."

defendant sought to bribe or intimidate witnesses (*Keesier* v. *State*, 154 Ind. 242, 56 N. E. 232), or to procure the absence of witnesses (*Eacock* v. *State*, 169 Ind. 488, 82 N. E. 1039; *Adams* v. *State*, 194 Ind. 512, 141 N. E. 460), or to manufacture or suppress evidence (*Perfect* v. *State*, 197 Ind. 401, 141 N. E. 52), or to suborn perjury (*Conway* v. *State*, 118 Ind. 482, 21 N. E. 285), or that the defendant fled or sought to flee the jurisdiction (*State* v. *Torphy*, 217 Ind. 383, 28 N. E. 2d 70; *Wilson* v. *State*, 222 Ind. 63, 51 N. E. 2d 848; *Barton* v. *State*, 154 Ind. 670, 57 N. E. 515; *Batten* v. *State*, 80 Ind. 394; *Porter* v. *State*, 2 Ind. 435), or that he resisted arrest (*Anderson* v. *State*, 147 Ind. 445, 46 N. E. 901; *Martin* v. *State*, 236 Ind. 524, 141 N. E. 2d 107, certiorari denied, 354 U. S. 927).

In all of these instances, defendant's conduct was admissible to show consciousness of guilt. Consequently quite apart from the circumstance that the conspiracy charged here (R. 182-186) was a continuous one, with no terminal date save that of the indictment itself, it is perfectly obvious that any evidence showing or tending to show that the present petitioner in August 1957 sought to head off an indictment in respect of acts over a period from May 1956 to January 1957 would be admissible to show a consciousness of guilt on his part in respect of these earlier acts.

That being so, such evidence would plainly have aided the prosecution at the trial of the Marion County indictment, even though the acts bore on an alleged effort to avoid being indicted in Lake County.

It follows that the use of the word "might" in the Government's formulation of the present question (Br. Op. 2), in terms of "because his testimony might relate to a state prosecution against him", does not so much state as beg the question. And the same is true of the Government's reference in its argument (Br. Op. 7) to "questions which might have disclosed information in some way relevant to the trial of the pending Indiana indictment." In the light

of the Indiana decisions set forth above, that information was clearly related and relevant to the State prosecution.

Second. As has been shown (*supra*, pp. 7-8, 10, 13-14), the witnesses Raddock and Sawochka were permitted to invoke their privilege against self-incrimination in respect of questions regarding the alleged effort to head off any indictment in Lake County, and Blaier was permitted to refuse to answer on grounds essentially similar to those thereafter relied upon by the petitioner (R. 82, 83, 84, 86).

It may be that petitioner might have been permitted by the Committee, a Federal agency, to claim a privilege against incriminating himself in respect of the pending State prosecution. But it is unnecessary to speculate on that point, because it is plain that, if he had invoked the privilege against self-incrimination, that fact could have been used against him at the trial of the Marion County indictment.

Whatever may be the present Federal law as to the use that can be made of a prior claim of the privilege against self-incrimination against a defendant who later testifies on his own behalf—and assuredly *Raffel* v. *United States*, 271 U. S. 494, has now but narrow authority after *Johnson* v. *United States*, 318 U. S. 189; *Grunewald* v. *United States*, 353 U. S. 391, 415-424; and *Stewart* v. *United States*, 366 U. S. 1—it is still law in Indiana that a plea of self-incrimination could be the subject of adverse inference if the witness elected to take the stand on his own behalf at a subsequent trial. See *State* v. *Schopmeyer*, 207 Ind. 538, 542-543, 194 N. E. 144, 146; *Watts* v. *State*, 226 Ind. 655, 663, 82 N. E. 2d 846, 849-850, reversed on other grounds *sub nom. Watts* v. *Indiana*, 338 U. S. 49. This much was admitted by the Government in the Court of Appeals in this case. U. S. Br. 26, note 8. And of course such an adverse inference at a trial in the Indiana courts would not violate the Fourteenth Amendment. *Adamson* v. *California*, 332 U. S. 46; *Twining* v. *New Jersey*, 211 U. S. 78.

Third. On the basis of the foregoing authorities we submit we have conclusively demonstrated that, had petitioner answered the questions now in issue, those answers would have aided the prosecution of the Indiana indictment which was then pending.

Actually, however, no such conclusive demonstration is necessary; all that is required is a showing that his answers *might* have aided the prosecution.

Here the analogy—and a very exact one—is the scope of the Fifth Amendment's guarantee against self-incrimination.

In (*Patricia*) *Blau* v. *United States*, 340 U. S. 159, this Court held that the privilege extended not only to answers that would in themselves support a conviction, but also to those that would furnish a link in the chain of evidence needed to prosecute. At the same Term, in *Hoffman* v. *United States*, 341 U. S. 479, 486-487, this Court said:

> "However, if the witness, upon interposing his claim, were required to prove the hazard in the sense in which a claim is usually required to be established in court, he would be compelled to surrender the very protection which the privilege is designed to guarantee. To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered *might* be dangerous because injurious disclosure *could* result."

We have added the italics, in view of the further comment (341 U. S. at 488) that "Petitioner could reasonably have sensed the peril of prosecution * * *."

The foregoing principles (which, incidentally, are law also in Indiana, see *Overman* v. *State*, 194 Ind. 483, 487, 490-491, 491, 143 N. E. 604, 605, 606, 606-607), have since been emphasized by this Court, both in *per curiam* reversals after argument (*Brunner* v. *United States*, 343 U. S. 918, reversing 190 F. 2d 167 (C.A. 9); *Greenberg* v. *United*

States, 343 U. S. 918, reversing 192 F. 2d 201 (C.A. 3)), as well as in a series of *per curiam* reversals simply on petitions for certiorari: *Singleton* v. *United States*, 343 U. S. 944, reversing 193 F. 2d 464 (C.A. 3); *Trock* v. *United States*, 351 U. S. 976, reversing 232 F. 2d 839 (C.A. 2); *Simpson et al.* v. *United States*, 355 U. S. 7, reversing *Simpson* v. *United States*, 241 F. 2d 222; *Wollam* v. *United States*, 244 F. 2d 212; and *McKenzie* v. *United States*, 244 F. 2d 712, all C.A. 9.

Accordingly, on any standard, petitioner amply established that answers to the questions asked him would have hurt him—and aided the prosecution—at the trial of the pending State indictment.

Fourth. We add, simply to show that the point has not been overlooked, that the Committee would not have been able to grant petitioner immunity had he been willing to answer. The statute which in *Adams* v. *Maryland*, 347 U. S. 179, was held to confer immunity "in any criminal proceeding against [the witness] in any court"—18 U. S. C. § 3486—has since been amended, see Sec. 1 of the Act of Aug. 20, 1954, c. 769, 68 Stat. 745, and, as it stood in its present form when petitioner refused to answer, was limited to specified offenses that did not include those for which he then stood indicted in Indiana. See, *accord*, *United States* v. *Baker*, C.A. 3, July 14, 1961, summarized in 30 U.S. Law Week 2054.

B. IT IS A VIOLATION OF DUE PROCESS OF LAW FOR A LEGISLATIVE COMMITTEE TO PRETRY A PENDING CRIMINAL CASE

So far as counsel are aware, this case presents the first instance where a Congressional committee, claiming powers of investigation, has confronted a witness with a statement of "background", "information", and specifications of "the subject matter being inquired into", that expressly set forth the fact and circumstances of a felony indictment then pending against him in a State court; where the com-

mittee has then sought to elicit answers that would have aided the prosecution at the trial of such indictment, both substantively and adjectively; where the committee both before and during its interrogation of the witness under such indictment has publicly pilloried him with implications and averments of guilt in anticipation of his trial on the pending indictment; where the committee closed its interrogation of the witness with a public call for "further exposure" and with an offer to "help law enforcement officials in the state" in which the indictment had been returned; and where the witness was thereafter convicted of contempt of Congress for refusal to assist the prosecution in such pending indictment.

Even in *Delaney* v. *United States*, 199 F. 2d 107, 115 (C. A. 1), where the committee also ignored the "difference between a legislative public hearing prior to indictment, and one where trial is impending under an existing indictment," the person under indictment was not questioned by the committee. That particular interference with the orderly processes of criminal justice has never, so far as we are aware, happened in any other instance save this one alone.

Where the witness has actually been indicted, he is already in the hands of the Executive and the Judiciary. Once he has been indicted, the Judiciary is "charged with the duty of assuring the defendant a fair trial before an impartial jury," and of determining "guilt or innocence solely on the basis of evidence to be presented at the impending trial." *Delaney, supra*, 199 F. 2d at 114. The matter is then *sub judice*.

Here, however, the Committee's announced subject-matter of inquiry (R. 21-24; quoted, *supra*, pp. 8-10) included the indictment pending against the petitioner, the factual matters alleged in and constituting its charges, and, in the course of the questioning of petitioner and of numerous other witnesses, matters which would have been admissible against petitioner at the trial.

Actually, petitioner's only role before the Committee was to submit to cross-examination regarding "information" as to criminality professed to have been received from unnamed and unidentified informants, formulated in fact as an indictment upon an indictment, and formulated in law, see Point IA, *supra* pp. 35-41, as matter prejudicial to him at the trial of the pending indictment. In substance and effect, petitioner's appearance before the Committee was a highly publicized legislative trial in advance of his judicial trial, with no content or procedure other than an *ex parte* cross-examination of the accuser—and a trial at which the Committee framed the charges, prosecuted the petitioner, fashioned its own procedures, laid down its own rules of substantive and adjective law alike, proclaimed guilt (in part because preceding witnesses had invoked a privilege against self-incrimination), publicly exhorted law enforcement officials to "further exposure" (R. 153) and prosecution in cooperation with the Committee (R. 153-154), then publicly rendered a verdict against petitioner as he was leaving the stand (R. 152-154), and, finally, entered a solemn judgment of guilt in writing in its Second Interim Report. This document (Sen. Rep. 621, Part 2, 86th Cong., 1st sess.), which became Government Exhibit 6 at the trial (R. 161-162, 166, 171), said this (pp. 590, 592) under the heading of "Findings—Maxwell C. Raddock and the United Protherhood of Carpenters and Joiners of America":

> "From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the Treasurer, Frank Chapman."

Such a pronouncement of guilt by legislative action without and in advance of a judicial trial is, at the very least, in the nature of the prohibited bill of attainder. Cf. *United States* v. *Lovett*, 328 U. S. 303; *Cummings* v. *Missouri*, 4 Wall. 277; *Ex parte Garland*, 4 Wall. 333.

What was said in *Delaney*—a decision, be it noted, that the Government did not seek to have reviewed here—stands as an appropriate commentary on the Committee's dealing with this petitioner (199 F. 2d at 110):

> "In this respect the committee hearing afforded the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial."

We submit that the Committee's pretrial of the pending criminal indictment against petitioner so far violated fundamental standards of fairness as to amount to a denial of due process of law. For, as this Court long ago said in *Kilbourn* v. *Thompson*, 103 U. S. 168, 182, the due process clause itself is "the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court and by others of the highest authority that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established."

First. Prejudgment by the press of the guilt of an accused person has long bedevilled American justice. Cf. *Stroble* v. *California*, 343 U. S. 181; *Shepherd* v. *Florida*, 341 U. S. 50; Frankfurter, J., in *Maryland* v. *Baltimore Radio Show*, 338 U. S. 912. On two recent occasions, this Court on direct appeal has reversed convictions where "prejudicial newspaper intrusion * * * poisoned the outcome." *Janko* v. *United States*, 366 U. S. 716; *Marshall* v. *United States*, 360 U. S. 310. And, only last June, this Court on collateral review set aside a State conviction where the quantum of adverse newspaper publicity precluded impanelling an impartial jury. *Irvin* v. *Dowd*, 366 U. S. 717.

The Committee's legislative adjudication of petitioner's guilt here was publicly announced in the presence of members of the press (R. 152). But the real variant in the present case is that the outcome of petitioner's pending

trial was poisoned, not by newspapers acting on their own, but by the Committee itself. This, indeed, is an issue now pending before this Court in *Beck* v. *Washington*, No. 40, this Term, in respect of Question 1(b) of that case.[3]

We submit that the basic issue in cases such as this one, *Beck* v. *Washington*, and *Delaney* v. *United States*, 199 F. 2d 107, *supra*, is not so much whether the preliminary legislative publicity on a fair appraisal is sufficient to vitiate the trial, it is rather whether the legislature may properly pretry a criminal case at all.

In the *Delaney* case, the indicted person was not called as a witness before the Committee, and hence was never interrogated there. In the *Beck* case, the defendant was not being prosecuted for contempt of Congress. But here, where just such a prosecution is involved, and where accordingly the scope of Congressional power is in question, we urge the formulation of a restriction that will forever preclude legislative pretrial of criminal cases.

Second. In *McGrain* v. *Daugherty*, 273 U. S. 135, 179-180, this Court said:

> "We think the resolution and proceedings give no warrant for thinking the Senate was attempting or intending to try the Attorney General at its bar or before its committee for any crime or wrongdoing. Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on his part."

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[3] See 365 U. S. at 867: "(b) Was it a denial of due process and equal protection as guaranteed by the Fourteenth Amendment for the Court, in the course of instructing the grand jury, to make statements of an inflammatory nature, prejudicial to petitioner, including a statement that testimony before a United States Senate Committee had disclosed that officers of the Teamsters Union (including petitioner) '. . . had, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from dues of its members . . .'?"

Here, we submit, the proceedings reflect not only an intention or an attempt on the part of the Committee to try petitioner at its bar, they show a full-blown legislative trial, terminating with a formal finding of guilt in the Committee's Second Interim Report.

Moreover, in *Sinclair* v. *United States*, 279 U. S. 263, 295, this Court said:

> "It may be conceded that Congress is without authority to compel disclosures for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits."

In the present case, the statements made by the Committee Chairman, both at the close of petitioner's testimony (R. 152-154) as well as on the stand (R. 165), leave no doubt that one of the principal purposes of the hearings was in fact to aid the prosecution of criminal cases. For, as the Committee Chairman said on the latter occasion (R. 165), "Our legislative purpose is to search out and find if crime has been committed."

Even so, the *Sinclair* analogy is not an accurate one. For the *Sinclair* case did not involve pending criminal prosecutions, but only a pending civil action (279 U. S. at 295, as to which see *Mammoth Oil Co.* v. *United States*, 275 U. S. 13). It follows that the Government is demonstrably wrong in saying (Br. Op. 8) that "In *Sinclair* v. *United States*, 279 U. S. 263, this Court made clear that a congressional committee can investigate matters which relate to pending criminal cases," and in saying further (Br. Op. 9), "The fact that this information also related to a pending criminal indictment is not material. *Sinclair* v. *United States, supra.*"

We repeat, *Sinclair* v. *United States*, 279 U. S. 263, did not deal with any pending criminal case. In *Sinclair*, there was no indictment, so that the constitutional rights that protect an indicted defendant, and the executive and judicial powers that are exerted against him at his trial, were not before this Court. Hence *Sinclair* did not deal with the problem of legislative pretrial of pending criminal prosecutions. Moreover, one basis of Sinclair's refusal to answer was his contention that the committee's power to investigate had been exhausted (279 U. S. at 290).

It is true that in *Delaney* v. *United States*, 199 F. 2d 107, 114, *supra*, the First Circuit said:

> "We mean to imply no criticism of the action of the King Committee. We have no doubt that the committee acted lawfully, within the constitutional powers of Congress duly delegated to it."

But, since the appellant Delaney was never called as a witness before that committee, the quoted observation was plainly *obiter*, and accordingly amounted to no more than a concession *arguendo*.

C. IT IS A VIOLATION OF DUE PROCESS OF LAW FOR ANY AGENCY OF THE UNITED STATES TO REQUIRE A CITIZEN TO SUBJECT HIMSELF TO PENALITIES BY A STATE OF THE UNION, PARTICULARLY WHEN, AS HERE, THE FEDERAL AGENCY FRANKLY SEEKS TO INSTIGATE AND ASSIST STATE PROSECUTIONS

(1) It is unfair, and hence a violation of due process, to put a witness in a situation where, regardless of what he does, he will be subjected to penalties

But petitioner's treatment by the Committee also violated the due process clause in another significant respect.

Passing the State-Federal problem for the moment—and it will be fully dealt with below—we have here a situation where a witness like the petitioner is impaled on the horns of a dilemma simply by being required to appear: he is virtually bound to incriminate himself no matter what he

does. If he answered the questions, he would have helped the pending prosecution, and thus have strengthened the possibility that he would be sent to jail. If he answered falsely, he would have committed perjury in violation of 18 U. S. C. § 1621, and similarly assured himself of being sent to jail. And, not having answered at all, he has been successfully prosecuted for contempt of Congress in violation of 2 U. S. C. § 192, and has been sentenced to both fine and imprisonment (R. 189-190).

Otherwise stated, the mere fact of calling him as a witness has necessarily and inescapably subjected him to penalties, regardless of what course he pursued once he was on the stand. The same consequence would be visited upon any other witness—except of course one whose past could not possibly expose him to jeopardy. We submit that such a procedure is so fundamentally unfair as to involve a deprivation of due process of law.

In a situation where the circumstances were perhaps more dramatic but where the witness's only risk of self-incrimination involved a Federal crime, the Sixth Circuit, reversing a conviction for contempt of Congress, said (*Aiuppa v. United States*, 201 F. 2d 287, 300):

> "Despite the enjoyment by millions of spectators and auditors of the exhibition by television of the confusion and writhings of widely known malefactors and criminals, when sharply questioned as to their nefarious activities, we are unable to give judicial sanction, in the teeth of the Fifth Amendment, to the employment by a committee of the United States Senate of methods of examination of witnesses constituting a triple threat: answer truly and you have given evidence leading to your conviction for a violation of federal law; answer falsely and you will be convicted of perjury; refuse to answer and you will be found guilty of criminal contempt and punished by fine and imprisonment. In our humble judgment, to place a person not even on trial for a specified crime in such predicament is not only not a manifestation of fair play, but is in

direct violation of the Fifth Amendment to our national Constitution."

The Court of Appeals directed the entry of a judgment of acquittal, and the Government did not seek review.

Is the present situation different because the answers sought to be obtained here would have led to the witness's conviction for a violation of State rather than Federal law? We submit that it should not be, for reasons about to be stated.

(2) A Federal agency cannot, consistently with fundamental fairness, force a citizen into a State jail

Under the present heading we are not dealing here with any question of the extent of the guarantee against self-incrimination that the States must grant an individual, such as was involved in *Twining* v. *New Jersey*, 211 U. S. 78; *Adamson* v. *California*, 332 U. S. 46; *Knapp* v. *Schweitzer*, 357 U. S. 371; and, just at the last Term, in *Cohen* v. *Hurley*, 366 U. S. 117. Nor do we have the question of how far the United States may use self-incriminating testimony obtained by a State's compulsory process. *Feldman* v. *United States*, 322 U. S. 487. Rather, the issue here is whether the United States may, consistently with due process of law, place a witness in a predicament where he will certainly be punished by the United States if he fails to answer and will increase the possibility that he will be punished by a State of the Union if he does.

We are aware that *United States* v. *Murdock*, 284 U. S. 141, and *Hale* v. *Henkel*, 201 U. S. 43, answer that question in the affirmative, certainly in a situation where the witness has not yet been prosecuted for any State offense, where he only apprehends the danger that such a prosecution is likely to follow once he testifies. Here, however, petitioner had actually been indicted by a State grand jury. We submit that this central fact adds up to a difference of substance. If, however, the Court is of the view that the

difference in the scope of State incrimination in the two situations amounts only to one of degree, then we are constrained to argue that both *United States* v. *Murdock* and *Hale* v. *Henkel* were wrongly decided.

a. United States *v.* Murdock *rested on a double misreading of English law.*

In the *Murdock* case, this Court squarely held that a witness questioned by a Federal officer, there an internal revenue agent, could not refuse to answer questions because the giving of the information required might subject him to prosecution under State law. This Court said (284 U. S. at 149):

> "Investigations for federal purposes may not be prevented by matters depending upon state law. Constitution Art. VI, § 2. The English rule of evidence against compulsory self-incrimination, on which historically that contained in the Fifth Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. *King of the Two Sicilies* v. *Willcox*, 7 State Trials (N. S.) 1050, 1068; *Queen* v. *Boyes*, 1 B. & S. 311, 330. This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. *Counselman* v. *Hitchcock*, 142 U. S. 547; *Brown* v. *Walker*, 161 U. S. 591, 606; *Jack* v. *Kansas*, 199 U. S. 372, 381; *Hale* v. *Henkel*, 201 U. S. 43, 68. As appellee at the hearing did not invoke protection against federal prosecution, his plea is without merit and the government's demurrer should have been sustained."

We will show, first, that the foregoing involves a misreading of the substantive English law, and second, that

the analogy of the English decisions is demonstrably inapposite.

First. The first English case on the extra-territorial scope of self-incrimination is *East India Company* v. *Campbell*, 1 Ves. Sr. 246, 247, decided in 1749, which allowed the privilege to a witness in England in respect of possible prosecution both in British India and in Ireland.

A century later, in what has become the leading case of *King of the Two Sicilies* v. *Willcox*, 1 Sim. (N.S.) 301, 7 St. Tr. N.S. 1050, the court allowed discovery as to matters that might incriminate the witnesses if they went to the Two Sicilies. The ruling rested in part on the proposition that, since foreign law was a question of fact, an English court could not know whether the answers would actually be incriminating. The Vice-Chancellor said (1 Sim. (N.S.) at 330, 7 St. Tr. N. S. at 1069),

> "No Judge can know, as matter of law, what would or would not be penal in a foreign country; and he cannot, therefore, form any judgment as to the force or truth of the objection of a witness, when he declines to answer on such a ground."

The Queen v. *Boyes*, 1 Best & S. 311, also relied on in the *Murdock* case, is hardly in point. There a witness had been pardoned in respect of the matter about which he was questioned, but refused to answer because of fear of impeachment. It was held that he had no reasonable ground to apprehend danger from such an improbable contingency.

The English case completely in point, but not cited in *Murdock*, is *United States* v. *McRae*, L. R. 4 Eq. 327, affirmed in part, L. R. 3 Ch. App. 79. There the United States brought a bill praying an account of all money received by the defendant as agent of the then defunct Confederate States. The defendant pleaded that his property would be subject to forfeiture under an Act of Congress, §§ 5-8 of the Act of July 17, 1862, c. 195, 12 Stat.

589, 590-591, and that he had received no pardon pursuant to § 13 of that Act, 12 Stat. at 592. Both English courts held that, since the foreign penalty was plainly established, the plea of privilege was good. Lord Chelmsford, L. C., said (L. R. 3 Ch. App. at 87):

> "It is a case entirely distinguishable from *King of the Two Sicilies* v. *Willcox*. There it was not shewn that the Defendants had rendered themselves liable to criminal prosecution. Here the plea alleges the particular ground of liability to forfeiture, and that proceedings have actually been taken and are pending to enforce it. There it was doubtful whether the Defendants would ever be within the reach of a prosecution, and their being so depended on their voluntary return to their own country. Here the subject of the forfeiture is within the power of the *United States*, and the proceedings against the Defendant would be equally effectual whether he remains here or returns to the country where his property is situate.
>
> "Under these peculiar circumstances I cannot distinguish the case in principle from one where a witness is protected from answering any question which has a tendency to expose him to forfeiture for a breach of our own municipal law."

Otherwise stated, the English law is that self-incrimination under foreign law is unavailable as a defense only when the danger is remote or when the foreign law cannot be proved.

We submit, therefore, that the substantive English law does not support either the reasoning or the result in *United States* v. *Murdock*.

Second. But there is a more fundamental reason why no English decision justifies the *Murdock* holding, namely, that State law is not foreign law so far as any agency of the United States is concerned. To the extent that the difference between *King of the Two Sicilies* v. *Willcox* and *United States* v. *McRae* turns on a question of proof, viz.,

the common law concept of foreign law as a fact to be proved like any other fact, that issue is not present when State law comes into question, for two reasons.

The first and obvious reason is that tribunals of the United States judicially notice the laws of every State. E.g., *United States* v. *Turner*, 11 How. 663; *Hanley* v. *Donoghue*, 116 U. S. 1; *Fourth Nat. Bank* v. *Francklyn*, 120 U. S. 747. The second and more fundamental reason is that the United States and the several States are not foreign nations *vis-à-vis* each other.

When the Supreme Court of Rhode Island refused to enforce the Emergency Price Control Act of 1942 on the ground that it was the penal statute of a foreign sovereign, this Court, saying that "Such a broad assumption flies in the face of the fact that the States of the Union constitute a nation", promptly reversed. *Testa* v. *Katt*, 330 U. S. 386, 389. We submit that the *Murdock* decision, which treated the laws of the several States as foreign law on the basis of the *King of the Two Sicilies* case, rested, like the Rhode Island ruling that was reversed, on a misconception of the nature of the Federal system.

Third. To the extent that the United States may properly require a witness to incriminate himself under State law, so a State should be able to require him to submit to penalties under Federal law. But an increasing number of States are protecting their witnesses against incrimination under Federal law, not on abstract grounds, but because of their recognition of the basic concept of Federalism.

Michigan was the first jurisdiction to hold that the privilege of a witness against self-incrimination accorded by its State constitution extended to protect a State witness from testifying as to matters that might tend to incriminate him in a pending prosecution in a Federal court under a law of the United States. *People* v. *Den Uyl*, 318 Mich. 645, 29

N. W. 2d 284. The court said (318 Mich. at 651, 29 N. W. 2d at 287):

> "It seems like a travesty on verity to say that one is not subjected to self-incrimination when compelled to give testimony in a State judicial proceeding which testimony may forthwith be used against him in a Federal criminal prosecution. And it is self evident that the immunity granted under a State statute would be of no avail in a Federal prosecution."

Accord: People v. *Hoffa*, 318 Mich. 656, 29 N. W. 2d 292.

The *Den Uyl* case has been followed by the courts of last resort of three States:

(1) *Florida*, see *State* v. *Kelly*, Fla., 71 So. 2d 887, 895-897; *Lorenco* v. *Blackburn*, Fla., 74 So. 2d 289 (denied on the facts); *Boynton* v. *State*, Fla., 75 So. 2d 211 (injunction based on purchase of a Federal gambling stamp, reversed).

(2) *Kentucky*, see *Commonwealth* v. *Rhine*, Ky., 303 S. W. 2d 301, 304, where the Kentucky Court of Appeals said:

> "We believe that to render effective the quoted Constitutional provision against self-incrimination, it is essential that it apply to prosecutions by the United States as well as to those by the Commonwealth. To hold otherwise would be to ignore the fact that our citizens are in a very real sense, as well as in a technical one, citizens of both the State of Kentucky and of the United States. The jurisdiction of both governments is coextensive."

This is realistic, sturdy Federalism, such as was unhappily ignored in *United States* v. *Murdock*.

(3) *Louisiana*, see *State* v. *Doran*, 215 La. 151, 39 So. 2d 894 (privilege recognized as to prosecution in California); *State* v. *Domingues*, 228 La. 284, 82 So. 2d 12 (same, as to offense under pending Federal indictment); *State* v. *Ford*, 233 La. 992, 99 So. 2d 320 (*Domingues* rule limited to situa-

tion where accused is actually under Federal indictment); *Mills* v. *Louisiana*, 360 U. S. 230 (*semble*, same as preceding).

Three legislatures have likewise adopted the broader rule:

(1) *California*, see Calif. Penal Code, § 1324, as amended by Calif. Stats. 1957, c. 2395, p. 4138, § 1 ("or could subject the witness to a criminal prosecution in another jurisdiction").

(2) *Illinois*, see Ill. Rev. Stat. 1953, c. 38, § 580a, as added by Ill. Laws 1953, p. 31, § 1 ("or otherwise would subject such witness to an indictment, information or prosecution * * * under the laws of another State or of the United States"), see *People* v. *Burkert*, 7 Ill. 2d 506, 131 N. E. 2d 495.

(3) *New Jersey*, see N. J. Stat. Ann., § 2A:84A-18, as added by N. J. Laws 1960, c. 52, § 18 ("a matter will incriminate (a) if it constitutes an element of crime against this State, or another State, or the United States").

b. Hale *v.* Henkel *rested on a like misreading of English law and also on a misreading of* United States *v.* Saline Bank.

In *Hale* v. *Henkel*, 201 U. S. 43, this Court held that a witness before a Federal grand jury under a Federal immunity statute could not refuse to answer because his replies might subject him to State prosecution. This Court adverted to the then recent case of *Jack* v. *Kansas*, 199 U. S. 372, saying (201 U. S. at 68-69):

> "It was held both by this court and by the Supreme Court of Kansas that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer, and that a danger so unsubstantial and remote did not impair the legal immunity. Indeed, if the argument were a sound one it might be carried still further and held to apply not only to state

> prosecutions within the same jurisdiction, but to prosecutions under the criminal laws of other States to which the witness might have subjected himself. The question has been fully considered in England, and the conclusion reached by the courts of that country that the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty. *Queen* v. *Boyes*, 1 B. & S. 311; *King of the Two Sicilies* v. *Willcox*, 7 State Trials (N. S.) 1049, 1068; *State* v. *March*, 1 Jones (N. Car.) 526; *State* v. *Thomas*, 98 N. Car. 599."

Here again, this Court failed to pay heed to the later case of *United States* v. *McRae*, L. R. 4 Eq. 327, affirmed in part, L. R. 3 Ch. App. 79. The quoted excerpt therefore does not accurately set forth the English law, nor does it note the obvious difference between Great Britain as against the Two Sicilies and the United States as against a State of the Union.

But that is not the only misreading we discern in *Hale* v. *Henkel*. In the very next paragraph following the one just quoted, Mr. Justice Brown said (201 U. S. at 69):

> "The case of *United States* v. *Saline Bank*, 1 Pet. 100, is not in conflict with this. That was a bill for discovery, filed by the United States against the cashier of the Saline Bank, in the District Court of the Virginia District, who pleaded that the emission of certain unlawful bills took place within the State of Virginia, by the laws whereof penalties were inflicted for such emissions. It was held that defendants were not bound to answer and subject them to those penalties. It is sufficient to say that the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law, and no question arose as to a prosecution under another jurisdiction."

The foregoing passage demonstrably misinterprets the *Saline Bank* case.

That case, as the report in the 1st of Peters shows, was "a bill against John Webster, Cashier, and a number of

others, as stockholders of the Virginia Saline Bank, to charge them in their private capacities, for certain deposits of money made with them, and also to subject their joint funds, &c."

The suit was brought in the District Court of the United States for the Western District of Virginia by the United States Attorney for that district to recover funds deposited by or on behalf of the Treasurer of the United States with the bank. The defendants pleaded (1 Pet. at 102) that

> "these defendants are advised, and insist, that they ought not to be compelled to discover, or set forth any matters, whereby they may impeach or accuse themselves of any offence or crime, or be liable by the laws of the commonwealth of Virginia, to penalties and grievous crimes; for which cause, these defendants humbly pray the judgment of this honorable Court, whether they shall be compelled to make any other or further answer to said bill of complaint, and humbly pray to be hence dismissed, &c."

The Virginia statute then in force, set out in the report (1 Pet. at 102-104), made the carrying on of a banking business by an unincorporated association such as the Saline Bank a misdemeanor, declared its contracts void, and provided for civil penalties. The District Court sustained the plea and dismissed the bill, whereupon the United States appealed.

Otherwise stated, in a suit by the United States in a Federal court to recover on a claim of the United States, the defendants pleaded that answering the bill would subject them to State penalties. But this Court affirmed the decree of dismissal. Chief Justice Marshall said (1 Pet. at 104):

> "This is a bill in equity for a discovery and relief. The defendants set up a plea in bar, alleging that the discovery would subject them to penalties under the statute of Virginia.
>
> "The Court below decided in favor of the validity of the plea, and dismissed the bill.

> "It is apparent that in every step of the suit, the facts required to be discovered in support of this suit would expose the parties to danger. The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it."

Accordingly, this Court affirmed the judgment of dismissal.

Yet Mr. Justice Brown later said in *Hale* v. *Henkel* (201 U. S. at 70):

> "It is sufficient to say that the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law, and no question arose as to a prosecution under another jurisdiction."

The Federal court was plainly doing no such thing. The Federal court was hearing a Federal claim, the claim of the United States to recover its deposits (cf. *Clearfield Trust Co.* v. *United States*, 318 U. S. 363), whereas any prosecution for the Virginia misdemeanor must have been brought in the Virginia courts, and was not involved in the Federal suit.

Moreover, the Virginia statute, set out at pp. 102-104 of 1 Peters, provided for a suit to be brought by the Attorney General of Virginia in the Superior Court of Chancery for the District of Richmond, and contained a specific proviso that "no disclosure made by any party defendant to such suit in equity, and no books or papers exhibited by him in answer to the bill, or under the order of the Court, shall be used as evidence against him in any motion or prosecution under this law." Consequently if, as was later said in *Hale* v. *Henkel*, that in the *Saline Bank* case "the Federal court was simply administering the state law", any disclosure by the defendants could not possibly have incriminated them. It is therefore entirely plain, on this

approach also, that the Federal court could not possibly have been administering State law.

In order to remove the discussion of the *Saline Bank* case from the realm of dialectic to that of fact, we have examined the original papers in that case, which are now in the National Archives, and we have printed in full in the Appendix hereto, at pp. 86-89, *infra*, the bill of complaint therein.

That document makes it clear that the United States did not rest its claim for relief on the provisions of any State statute, but simply asked a money judgment against the stockholders, on the theory that they had fraudulently conspired with each other to withhold the funds in their hands from application to the draft and deposit and notes taken in due course of business by the United States.

The bill of complaint plainly shows that the United States was not asking for either penalties or forfeitures, and that the State statute was in the case only because answers to the interrogatories (*infra*, p. 90) would have subjected the defendants to penalties under the State statute.

It is therefore quite wrong to say (*Hale* v. *Henkel*, 201 U. S. at 70) that "the prosecution was under a state law which imposed the penalty, and that the Federal court was simply administering the state law." There was no prosecution, and the Federal court was in no sense administering the State law that imposed the penalty.

That this is the proper reading of the *Saline Bank* case was also noted in the volume just before the one containing *Hale* v. *Henkel*, namely, in *Ballmann* v. *Fagin*, 200 U.S. 186. There Mr. Justice Holmes, speaking for the Court said (200 U. S. at 195-196):

> "As we have said, [Ballmann] set forth that there were many proceedings on foot against him as party to a 'bucket shop', and so subject to the criminal law of the State in which the [Federal] grand jury was sitting.

According to *United States* v. *Saline Bank*, 1 Peters, 100, he was exonerated from disclosures which would have exposed him to the penalties of the state law. See *Jack* v. *Kansas*, 199 U. S. 372, decided this term. One why or the other we are of opinion that Ballmann could not be required to produce his cash book if he set up that it would tend to criminate him."

(3) This Court should reaffirm the pristine Federalism of the Great Chief Justice

We have shown that the reasons given in the *Murdock* and *Hale* cases, for holding that a plea of self-incrimination made by a witness before a Federal tribunal does not protect him from incriminating himself in respect of State prosecutions, will not withstand analysis.

Here, however, petitioner specifically waived any reliance on the privilege against self-incrimination (R. 125, 127), placing his objection solely on the ground of due process (R. 121-122, 123, 124-125), namely, that each question now in issue "relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment and thus be in denial of due process of law."

Thus there is raised a question of fundamental fairness, involving here the scope of another clause of the Fifth Amendment, the one protecting against a denial of due process of law.

We ask, Is it consistent with fundamental fairness to insure that a witness before a Congressional committee, situated as petitioner was, is virtually bound to go to jail simply because he appears pursuant to a subpoena? For that is what is actually involved here: No matter what petitioner could have said or done, punishment followed with virtual inevitability from the interrogation to which he was subjected.

Resolution of the question just put requires an analysis of the numerous decisions of this Court holding that the due process clause of the Fourteenth Amendment does not include any privilege against self-incrimination.

First. Only at the last Term (*Cohen* v. *Hurley*, 366 U. S. 117, 127-129), this Court cited *Twining* v. *New Jersey*, 211 U. S. 78, and *Adamson* v. *California*, 332 U. S. 46, for the proposition that the Fourteenth Amendment did not grant a Federal constitutional right to a witness not to be required to incriminate himself in a State proceeding. With deference, the proposition was too broadly stated, for all that was involved in *Twining* and in *Adamson* was the prosecution's comment on the accused's failure to take the stand, a very different matter.

Indeed, whether the Fifth Amendment's guarantee against self-incrimination extends far enough to preclude similar comment by Federal prosecutors has never been squarely decided, nor could it have been, for the Federal statute, ever since Federal criminal defendants were first granted the right to testify, has always specifically prohibited such comment. Act of March 16, 1878, c. 37, 20 Stat. 30, now 18 U. S. C. § 3481 ("His failure to make such request shall not create any presumption against him."); see *Bruno* v. *United States*, 308 U. S. 287.

Insofar as other cases appear to lay down any broader rule, the expressions are not only *obiter* but expand the prior decisions. Thus, in *Snyder* v. *Massachusetts*, 291 U. S. 97, 105, it was said that "The privilege against self-incrimination may be withdrawn and the accused put upon the stand as a witness for the state," citing *Twining* v. *New Jersey*—which did not involve any such step. The comments in *Brown* v. *Mississippi*, 297 U. S. 278, 285; *Palko* v. *Connecticut*, 302 U. S. 319, 323-324; and *Knapp* v. *Schweitzer*, 357 U. S. 371, 374, stand on no higher ground.

We submit that nothing in the *Twining* or *Adamson* holdings requires this Court to sustain a proceeding such as the one now under consideration, where Federal power is consciously exerted to force into a State jail one who has simply been called as a witness before a Congressional committee.

Second. Cases like *Jack* v. *Kansas*, 199 U. S. 372, need not detain us long; the rationale there was that the State witness could not claim his privilege in respect of a Federal prosecution of which, according to this Court (199 U. S. at 382), there was no "real danger." Here, on the other hand, the State prosecution had already commenced, an indictment had actually been returned, and the answers to the questions now in issue were clearly admissible against petitioner at the State trial.

Third. Finally, *Cohen* v. *Hurley*, 366 U. S. 117, is distinguishable because there the petitioner faced, not a criminal prosecution, but disbarment. It seems sufficient to remark that to hold a lawyer, a member of a highly privileged profession, to a duty of full and frank disclosure to the courts in respect of asserted professional misconduct, does not inexorably compel the conclusion that a similar ruling must be applied to a layman actually under indictment. For, as this Court said (366 U. S. at 131),

> "On the basis of the factual distinctions that we have mentioned above, we consider that a State can constitutionally afford a different procedure—the present procedure—in these judicial investigations from that in criminal prosecutions."

Fourth. What is left to be reconsiderd, therefore, is the rationale of *United States* v. *Murdock*, 284 U. S. 141, and of *Hale* v. *Henkel*, 201 U. S. 43, both of which, as we have shown above, pp. 50-59, rest upon misreadings of the decisions severally relied upon, and upon demonstrably inaccurate analogies. There must also be reconsidered the *sequelae* of those cases, of which those currently most cited are *Feldman* v. *United States*, 322 U. S. 487, and *Knapp* v. *Schweitzer*, 357 U. S. 371. See also *Mills* v. *Louisiana*, 360 U. S. 230.

In asking such reconsideration, we vouch to warranty the words of Mr. Justice Brandeis in *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 405, 406-410, 412-413:

"*Stare decisis* is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. Compare *National Bank* v. *Whitney*, 103 U. S. 99, 102. This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognising that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function. Compare *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 681. Recently, it overruled several leading cases, when it concluded that the States should not have been permitted to exercise powers of taxation which it had theretofore repeatedly sanctioned. In cases involving the Federal Constitution the position of this Court is unlike that of the highest court of England, where the policy of *stare decisis* was formulated and is strictly applied to all classes of cases. Parliament is free to correct any judicial error; and the remedy may be promptly invoked.

"The reasons why this Court should refuse to follow an earlier constitutional decision which it deems erroneous are particularly strong where the question presented is one of applying, as distinguished from what may accurately be called interpreting, the Constitution. In the cases which now come before us there is seldom any dispute as to the interpretation of any provision. The controversy is usually over the application to existing conditions of some well-recognized constitutional limitation. This is strikingly true of cases under the due process clause when the question is whether a statute is unreasonable, arbitrary or capricious; of cases under the equal protection clause when the question is whether there is any reasonable basis for the classification made by a statute; and of cases under the commerce clause when the question is whether an admitted burden laid by a statute upon

interstate commerce is so substantial as to be deemed direct."

* * * * *

"In cases involving constitutional issues of the character discussed, this Court must, in order to reach sound conclusions, feel free to bring its opinions into agreement with experience and with facts newly ascertained, so that its judicial authority may, as Mr. Chief Justice Taney said, 'stand altogether on the force of the reasoning by which it is supported.'"[4]

We do not apologize for quoting in this instance from a dissenting opinion—because, within less than six years, the majority opinion in *Burnet* v. *Coronado Oil & Gas Co.* was squarely overruled. *Helvering* v. *Mountain Producers Corp.*, 303 U. S. 376, 387.

Fifth. To suggest (*Knapp* v. *Schweitzer*, 357 U. S. 371, 374; *Cohen* v. *Hurley*, 366 U. S. 117, 127-128) that the scope of the Due Process clause in respect of self-incrimination became settled for all time in *Twining* v. *New Jersey*, 211 U. S. 78, is surely too rigid a process of constitutional interpretation, on a par with the suggestion that the scope of Due Process in connection with unreasonable searches and seizures became forever fixed by what was said in *Weeks* v. *United States*, 232 U. S. 383, 398. It did not require *Elkins* v. *United States*, 364 U. S. 206, much less *Mapp* v. *Ohio*, 367 U. S. 643, to demonstrate the unsoundness of any such view; *Wolf* v. *Colorado*, 338 U. S. 25, quite sufficed to demonstrate that the Fourteenth Amendment was still pliable enough to include the substance of the Fourth.

Nor is it necessary to determine whether or not the Fourteenth Amendment now includes all of the Fifth Amendment's clause against self-incrimination; that question may well be left until another day. Indeed, only at the last Term, there was a clear indication that a State's power

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[4] Footnotes omitted.

to force incriminatory testimony is not unlimited.[5] In this case we only ask this Court to declare that it is a violation of due process for a Federal agency, in a Federal proceeding, to require a witness appearing before it to give answers that will, with demonstrable certainty, force him to incriminate himself in a pending State criminal proceeding.

Sixth. It cannot fairly be said of that proposition, as might perhaps have properly been said in *Knapp v. Schweitzer*, 357 U. S. 371, 375, that "To recognize such a claim would disregard the historic distribution of power as between Nation and States in our federal system." For in the present case we have a guideline laid down by the Great Chief Justice himself, who, in a situation where defendants in a Federal court pleaded danger of State penalties, flatly and peremptorily and quite simply said,

> "The rule clearly is, that a party is not bound to make any discovery which would expose him to penalties, and this case falls within it."

We submit that this Court should return to the sturdy Federalism of Chief Justice Marshall.

Seventh. It is proper to point out that the Committee recognized the propriety of the *Saline Bank* ruling in substance, inasmuch as the Chairman repeatedly ruled that no inquiry would be made regarding the matters specifically alleged in the pending State indictment. "The subject matter of the indictment will not be gone into, if he feels that it might jeopardize his defense" (R. 77). "That rule or policy will be observed" (R. 78). And see, *accord*, R. 78-79, 81-82, 84-85, 86, 92, 94, 97, 122, 125, 126, 128, 130,

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[5] See *Cohen v. Hurley*, 366 U. S. 117, 129:

> "This is not to say, of course, that States have free rein either in the choice of means of forcing incriminatory testimony, or in the drawing of inferences from a refusal to testify on grounds of possible self-incrimination, no matter how objectionable or irrational."

132-134; most of the foregoing references are to statements by the Chairman, but some are to similar statements made by the Committee's counsel and by Senator Ervin.

The difference, then, between petitioner and the Committee came to this, that while the Committee recognized that it was not proper to ask about the pending State indictment or to hamper petitioner in his defense thereto, the Committee was either unable or unwilling to recognize the bearing of the unanswered questions on his impending Indiana trial.

(4) Upholding petitioner's contention will not hamper legitimate legislative inquiries

If the Court adopts the view we urge, that to permit a Federal agency to force an indicted witness to incriminate himself under State law constitutes a violation of Due Process of Law, it might be argued that it is then open to State authorities to hamper legitimate Congressional inquiries by indicting witnesses in respect of the matters about which the committees of Congress may be seeking information.

That danger is probably chimerical, but in any event it is one easily overcome. By reenacting the substance of old 18 U. S. C. § 3486, as it stood when considered in *Adams* v. *Maryland*, 347 U.S. 179, the witness will have immunity in any criminal proceeding against him in any court—i.e., including State courts—and the Committee will be free to require answers. For, very plainly, had such a statute been in force when this petitioner was on the stand, there would have been no substance in his objection: had the use of his answers in the pending Indiana prosecution been prohibited, they would not and could not have been said to "aid the prosecution of the case in which I am under indictment."

See also 18 U. S. C. § 1406, as just construed in *Reina* v. *United States*, 364 U. S. 507, 511: "Congress may legislate

immunity restricting the exercise of state power to the extent necessary and proper for the more effective exercise of a granted power, and distinctions based upon the particular granted power concerned have no support in the Constitution."

(3) In any event, the demonstrable fact that the Senate Committee have sought to assist, encourage, and indeed exhort State law enforcement officials renders improper the questions to which petitioner

The record in this case shows that the Committee questioning the petitioner was not simply inquiring into matters of Federal cognizance that incidentally revealed the commission of State offenses. To the contrary, the Committee actively sought to assist and encourage—indeed, to instigate—State prosecutions in respect of the matters it uncovered.

Thus, at the close of petitioner's testimony, the Chairman of the Committee made the following public statement in the presence of the press (R. 153-154):

> "The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Unions, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.
>
> "All the facts regarding this conspiracy undoubtedly have not been developed by the committee.
>
> "Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

Thereafter, appearing as a prosecution witness at petitioner's trial for contempt of Congress, the Committee Chairman testified (R. 165):

> "Q. As Chairman of this Committee, did you have any intention when you said, what I have read several

times and I am sure both sides know what it is and it is in the record, did you have any intention of encouraging or assisting the State of Indiana in conducting a further investigation of this matter looking towards a state prosecution?

* * * * *

"The Witness: This was the conclusion of the hearings in this particular investigation. At the conclusion, I made this brief statement that is in the record.

"Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed. Our legislative purpose is to search out and find if crime has been committed.

"My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them."

In view of this uncontradicted evidence, different principles come into play, namely, the analogy of the varying search-and-seizure combinations involving cooperative State and Federal activity up to the time that *Mapp* v. *Ohio*, 367 U. S. 643, finally excluded all illegally seized evidence from use in any prosecution, State or Federal.

Before the *Mapp* decision, evidence illegally acquired by State officers without Federal participation was inadmissible in a Federal prosecution (*Elkins* v. *United States*, 364 U. S. 206), while evidence illegally acquired by Federal officers without State participation was, at least by orders *in personam*, made unavailable in a subsequent State prosecution (*Rea* v. *United States*, 350 U. S. 214).

Where there was Federal participation in an illegal State search, the evidence was excluded from use in Federal

courts (*Byars* v. *United States*, 273 U. S. 28; *Lustig* v. *United States*, 338 U. S. 74); and the same was true where State agents made an illegal search in the process of helping to enforce Federal law (*Gambino* v. *United States*, 275 U. S. 310).

That same principle has been held applicable in the area of immunity and self-incrimination. In *Feldman* v. *United States*, 322 U. S. 487, this Court by 4-3 held that testimony compelled by a State court under a State immunity statute could be used in a Federal prosecution. But this Court said (322 U. S. at 494),

> "If a federal agency were to use a state court as an instrument for compelling disclosures for federal purposes, the doctrine of the *Byars* case [273 U. S. 28], *supra*, as well as that of *McNabb* v. *United States*, 318 U. S. 332, afford adequate resources against such an evasive disregard of the privilege against self-incrimination."

Similarly, this Court in *Knapp* v. *Schweitzer*, 357 U. S. 371, 380, said:

> "Of course the Federal Government may not take advantage of this recognition of the States' autonomy in order to evade the Bill of Rights. If a federal officer should be a party to the compulsion of testimony by state agencies, the protection of the Fifth Amendment would come into play. Such testimony is barred in a federal prosecution, see *Byars* v. *United States*, 273 U. S. 28. Whether, in a case of such collaboration between state and federal officers, the defendant could successfully assert his privilege in the state proceeding, we need not now decide, for the record before us is barren of evidence that the State was used as an instrument of federal prosecution or investigation."

Here the record shows precisely the converse situation: if petitioner had answered the questions, then State courts could have been using the Federal committee as an instrument for compelling disclosure for State purposes. In-

deed, this would be an *a fortiori* case, because here all this was being done with the encouragement of the Federal committee. For, as the Chairman said (R. 153), "Further exposure can and should be made."

We say, therefore, that the resultant interplay between Federal and State authorities at petitioner's expense that is disclosed here plainly denied him due process of law.

If we are right on our due process point, then, plainly, it is immaterial that the questions asked petitioner were "pertinent to the investigation that the committee was authorized to conduct" (Br. Op. 8), for the reason that "the Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights." *Barenblatt* v. *United States*, 360 U. S. 109, 112.

II. BY REQUIRING ANSWERS FOR THE EXPRESSED PURPOSE OF "FURTHER EXPOSURE" AND "TO SEARCH OUT AND FIND IF CRIME HAS BEEN COMMITTED", PURSUANT TO A RESOLUTION THAT DIRECTED IT TO INVESTIGATE "THE EXTENT TO WHICH CRIMINAL * * * PRACTICES OR ACTIVITIES ARE, OR HAVE BEEN, ENGAGED IN", THE COMMITTEE ASSUMED POWERS GRANTED ONLY TO THE EXECUTIVE AND THE JUDICIARY, AND HENCE ACTED WITHOUT LAWFUL POWER OR JURISDICTION

A. THE COMMITTEE FRANKLY AND OPENLY DECLARED THAT ITS PURPOSE WAS EXPOSURE

The present record clearly demonstrates that the Committee, whose authority is now being called into question, so formulated its initial public announcement of "the subject matter being inquired into" (R. 21) as to include therein the matters alleged in the Indiana indictment against this petitioner. Comparison of the allegations of that instrument (R. 182-189), which are summarized at pages 6-7,

above, with the announcement made by the Committee's counsel (R. 21-23), quoted verbatim at pages 8-9, above, demonstrates the identity of subject matter.

At the close of petitioner's testimony, the Committee Chairman publicly accused him of committing a crime, saying (R. 153-154):

> "The testimony further indicates that certain high officials of both the Teamsters and the Carpenters Union, two of the largest unions in the country, with the help and assistance of Mr. Raddock were involved in a conspiracy to subvert justice in the State of Indiana.
>
> "All the facts regarding this conspiracy undoubtedly have not been developed by the committee.
>
> "Further exposure we believe can and should be made. We will be glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter."

Testifying as a witness at petitioner's trial for contempt of Congress, the Committee Chairman said (R. 165):

> "Our legislative function had been performed in seeking information regarding crimes and improper activities. Some evidence had been presented indicating the possibility of a further crime involving this defendant possibly and officers of another large union. It has been our practice to cooperate with state and federal officials where any evidence is developed before us with respect to a crime having been committed. Our legislative purpose is to search out and find if crime has been committed.
>
> "My statement here is to the effect that if the state officials desired to pursue any testimony that we had developed, we would cooperate with them and make the record available to them."

And, later, the Committee found as a fact that petitioner used Raddock "as a fixer" to head off any indictment in

Lake County. See Government Exhibit 6 (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess.), at p. 592, quoted above, page 26.

Otherwise stated, the Committee here acted as a grand jury returning both an accusation in writing and an exhortation to the law enforcement agencies of Indiana to undertake further exposure on their own.

Moreover, unlike the situation considered in *Wilkinson* v. *United States*, 365 U. S. 399, where the Court divided on whether the primary purpose of the committee there involved was exposure; unlike *Watkins* v. *United States*, 354 U. S. 178, 200, where the Court refused to find a purpose merely to expose where no such purpose appeared in the resolution directing the investigation; here the resolutions authorizing the present Committee to proceed directed it in terms to undertake the functions of a grand jury. Those resolutions authorized and directed this Committee "to conduct an investigation and study of the extent to which criminal * * * practices or activities are, or have been, engaged in * * *" (R. 176, 179).

Of course the fact that an investigation might possibly disclose crime does not vitiate the essentials of an inquiry undertaken for a proper legislative purpose. *McGrain* v. *Daugherty*, 273 U. S. 135, 179-180, quoted above, p. 45. But here one of the principal purposes set forth in the resolution that directed the investigation sought to detect crime. Moreover, as the Court noted in *Watkins* v. *United States*, 354 U. S. 178, 195,

> "Prior cases, like *Kilbourn*, *McGrain* and *Sinclair*, had defined the scope of investigative power in terms of the inherent limitations of the sources of that power. In the more recent cases, the emphasis shifted to problems of accommodating the interest of the Government with the rights and privileges of individuals. The central theme was the application of the Bill of Rights as a restraint upon the assertion of governmental power in this form."

And, so far as the present petitioner was concerned, the thrust of the Committee's questions was such that, by exposing petitioner and by requiring him to answer the questions that are now in issue, he was well-nigh certain to be subjected to punishment in the prosecution already commenced against him. See Point IA, pp. 35-41, *supra*.

B. THE COMMITTEE'S SECOND INTERIM REPORT DEMONSTRATES THAT IT DID NOT NEED PETITIONER'S ANSWERS FOR ANY FACT-FINDING PURPOSE

The argument that the Committee had a right to interrogate petitioner at length because of the inherent Congressional power to find facts even unrelated to specific legislation[6] cannot fairly be made upon this record. For here the Committee found as a fact everything that it sought to obtain from the questions it put to this petitioner, and which he did not answer.

The Committee found as follows (Gov't. Ex. 6, R. 161-162, 171; Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess., p. 592):

> "From the evidence, the committee also finds that Maxwell C. Raddock was used by Hutcheson as a fixer in an attempt to head-off the indictment of Hutcheson, the Carpenter's vice president, O. William Blaier, and the treasurer, Frank Chapman."

And that finding was preceded by a detailed summary of a mass of evidence documenting the conclusion (*id.*, at pp. 554-560).

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[6] "A problem opens before Congress and a committee is instructed to investigate and see what can be done. • • • It may, as did Senate committees in 1885 and 1896, make no answer but simply set forth the facts for the judgment of the legislature. No such investigation is fruitless; no such investigation is made in pursuance of other than legislative functions." Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 217-218.

Indeed, the Committee Counsel's background statement (R. 21-23), quoted above in part E of the Statement (*supra*, pages 8-9), shows that the Committee had already completed its fact-finding before this phase of its hearings commenced. All that the Committee lacked were admissions, out of the several witnesses' own mouths, that the allegations against them were true. This is not fact-finding, this is exposure only for exposure's sake.

It is therefore plain that petitioner was cited for contempt, not because he thwarted the Committee's fact-finding activities, nor even because he did not answer on grounds of self-incrimination—Blaier also refused to answer virtually identical questions without invoking that privilege, which, in the Chairman's view (*supra*, pp. 10-13) was tantamount to a confession of guilt—but was so cited simply for purposes of exposure and punishment.

C. HERE THE COMMITTEE UNDERTOOK EXECUTIVE AND JUDICIAL FUNCTIONS UNRELATED TO ANY LEGITIMATE LEGISLATIVE PURPOSE

Broad though the Congressional power of investigation undoubtedly is, it is still subject to limitations. As this Court said only two years ago in *Barenblatt v. United States*, 360 U. S. 109, 111-112:

> "The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.
>
> "Broad as it is, the power is not, however, without limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government. Lacking the judicial power given to the Judiciary, it cannot inquire into matters that are exclusively the concern of the Judiciary. Neither can it supplant the Executive in what exclusively belongs to the Executive. And the Congress, in common with all branches of the Government,

> must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights."

The foregoing passage simply restated what had earlier been said in *Watkins* v. *United States*, 354 U. S. 178, 187:

> "Nor is the Congress a law enforcement or trial agency. These are functions of the executive and judicial departments of government. No inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible."

The same thought runs through earlier cases. Thus, in *Quinn* v. *United States*, 349 U. S. 155, 161, the Court said:

> "Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary."

Somewhat earlier, in *Tenney* v. *Brandhove*, 341 U. S. 36, 378, the Court noted that "To find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive."

Here, we submit, the Committee did exceed the bounds of legislative power. Its charter (R. 176, 179) directed it to ascertain whether "criminal * * * practices or activities are, or have been, engaged in"; its Chairman said during Raddock's testimony (R. 24), "I was hopeful that you could cooperate with us and help us get leads here and evidence that would help to expose those who may have engaged in criminal acts"; the Chairman at the close of petitioner's testimony said (R. 153-154) "Further exposure we believe can and should be made. We will be

glad to assist and help law enforcement officials in the State of Indiana if they determine that they would interest themselves in the matter"; and on the stand the Chairman frankly stated (R. 163) that "Our legislative purpose is to search out and find if crime has been committed."

Those are the functions, not of legislatures, but of law enforcement officers, of prosecutors, and of grand juries. For, as this Court once said (*Jones* v. *Securities & Exch. Comm.*, 298 U. S. 1, 21), "the grand jury abides as the appropriate constitutional medium for the preliminary investigation of crime and the presentment of the accused for trial."

Similarly, the Ninth Circuit has remarked (*Hubner* v. *Tucker*, 245 F. 2d 35, 39, note 6) that "The grand jury is an instrumentality of a court, which has general jurisdiction over crimes supposed or alleged to have been committed. An executive agency has no such power." Nor, we submit, does the Congress or any of its committees have any such power.

It follows that, in asking petitioner the questions now in issue, the Committee was acting outside its legislative role. Accordingly, petitioner could rightfully refuse to answer. *McGrain* v. *Daugherty*, 273 U. S. 135, 176.

III. A WITNESS BEFORE A LEGISLATIVE COMMITTEE IS NOT RESTRICTED TO INVOKING THE FIFTH AMENDMENT'S GUARANTEE AGAINST SELF-INCRIMINATION AS THE SOLE GROUND FOR REFUSING TO ANSWER QUESTIONS PUT TO HIM

In announcing the judgment of conviction, the District Judge said (R. 174) that "the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment. He did not seek it and it is the only way he could properly seek it, before a Committee of Congress."

The District Judge relied (R. 174) on "the Sacher case"—whether on *Sacher* v. *United States*, 240 F. 2d 46

(D. C. Cir.), judgment vacated, 354 U. S. 930, or on *Sacher* v. *United States*, 252 F. 2d 828 (D. C. Cir.), reversed, 356 U. S. 576, is not clear—noting (R. 174) that "Mr. Hitz [Assistant United States Attorney prosecuting petitioner] doesn't seem to think it is in point with the facts of this case."

We agree with Mr. Hitz that neither *Sacher* decision supports the ruling announced by the District Judge, and we assert further that a long line of cases here demonstrates the incorrectness of that ruling.

A. A WITNESS BEFORE A LEGISLATIVE COMMITTEE, LIKE A WITNESS BEFORE A COURT, MAY INVOKE ANY PRIVILEGE RECOGNIZED BY LAW AS A GROUND FOR REFUSING TO ANSWER QUESTIONS PUT TO HIM

Only last May, this Court said (*Slagle* v. *Ohio*, 366 U. S. 259, 265):

> "Surely traditional notions of fair play contemplate that a person summoned to testify before any adjudicatory or investigatory body, including a legislative investigatory committee, may object to any question put to him upon any available ground however tenuous."

This pronouncement involved no new departure. Just two years earlier, in *Barenblatt* v. *United States*, 360 U. S. 109, 112, the Court said that "Congress, in common with all branches of the Government, must exercise its powers subject to the limitations placed by the Constitution on governmental action, more particularly in the context of this case the relevant limitations of the Bill of Rights."

That being so, the District Judge here was plainly in error in holding that, for purposes of a prosecution for contempt of Congress, the Bill of Rights was limited to a single clause of the Fifth Amendment. Moreover, if there was indeed any such limitation, then there would have been no occasion in *Barenblatt* for the Court to devote ten pages

of its opinion (360 U. S. at 125-134) to a consideration of the merits of the First Amendment claim that was there put forward; a simple notation of unavailability would have sufficed.

The *Barenblatt* holding, that all of the Bill of Rights was available to a witness before a Congressional Committee, likewise was not novel; it had been anticipated at least twice.

In *Watkins* v. *United States*, 354 U.S. 178, 188, the Court had said:

> "This, of course, assumes that the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice. The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged."

Further, at p. 197, the Court had ruled that "The First Amendment may be invoked against infringement of the protected freedoms by law or by lawmaking." And in *Quinn* v. *United States*, 349 U. S. 155, 161, the Court had noted that "Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, *such as* the Fifth Amendment's privilege against self-incrimination which is in issue here." We have added the italics to show the non-restrictive character of the example.

Indeed, we think it clear that any privilege recognized by law may be invoked by a witness before a legislative committee. This proposition was early recognized; see Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 219:

> "Established privileges of immunity, of course, exist before such committees as well as before courts of law."

The attorney-client privilege, for example, was recognized as valid on this very record (R. 58, 59, 60, 62, 63, 65, 66, 69, 70, 71, 72, 73). We have no doubt that the witness who there refused to answer on grounds of the attorney-client privilege could not have been successfully prosecuted for contempt of Congress, and that the same conclusion would follow in the case of one who invoked the privilege that protects communications between husband and wife.

But it is not necessary to pursue the outermost reaches of the privileges on which the witness before a legislative committee may rely. Suffice it to say that the guarantees of the Bill of Rights have always been held available, and that petitioner here invoked one part of the Bill of Rights, viz., the Due Process clause of the Fifth Amendment. If, as we have argued above, he is correct as to the substance of that clause, he does not fail because he chose not to avail himself of another clause of the same Amendment, or, for that matter, of other and independent grounds for refusing to answer.

B. WHERE, AS HERE, THE QUESTIONS INVOLVE A DEPRIVATION OF DUE PROCESS OF LAW, A WITNESS BEFORE A CONGRESSIONAL COMMITTEE IS NOT REQUIRED TO PLACE HIS REFUSAL TO ANSWER ON ONLY THE GROUND THAT WOULD AID THE PROSECUTION IN A PENDING CRIMINAL CASE, AND THAT, ADDITIONALLY, AS IN THE EXPRESSED VIEW OF THE COMMITTEE CHAIRMAN HERE, WAS TANTAMOUNT TO AN ADMISSION OF GUILT

What the District Judge necessarily held here—with the apparent concurrence of the Court of Appeals—was that the merits of petitioner's due process contentions could not be considered, because (R. 174) "the relief that this defendant ought to have gotten before the Committee of Congress was his claim under the immunity clause of the Fifth Amendment."

Let us examine the consequences if petitioner had in fact invoked a privilege against self-incrimination.

First. He would have hurt himself at his Indiana trial had he taken the stand (*supra*, pp. 35-41), as indeed the Government conceded in the Court of Appeals (U. S. Br. 26, note 8); and if it be objected that he might not have testified there in any event, the short answer is that to have claimed the privilege before the Committee would materially have circumscribed his course of action at the trial.

Second. It is not necessary to speculate whether, if petitioner had in fact invoked the privilege against self-incrimination, the Committee would have allowed the claim, as in fact it allowed other witnesses to do (*supra*, pp. 7-8, 10, 13-14), nor to argue whether under existing law (e.g., *United States* v. *Murdock*, 284 U. S. 141) the Committee would have been justified in disallowing such a claim on his part. For the record shows that,

Third, the Chairman in repeated announcements made it plain that in his view a claim of the privilege against self-incrimination was tantamount to an admission of guilt. See part F of the Statement, *supra*, pp. 10-13. The same view runs through those portions of the Committee's Second Interim Report that were introduced in evidence at the trial (Sen. Rep. No. 621, Part 2, 86th Cong., 1st sess. [Govt. Ex. 6, R. 161-162, 170], pp. 554-556, 592).

We are constrained to note that the Chairman's views, set forth in June 1958, are in sharp contrast with what this Court has said regarding the effect that can properly be given to an invocation of the privilege against self-incrimination.

In *Emspak* v. *United States*, 349 U. S. 190, 195, decided in May 1955, the Court said:

> "* * * if it is true that in these times a stigma may somehow result from a witness' reliance on the Self-Incrimination Clause, a committee should be all the more ready to recognize a veiled claim of the privilege. Otherwise, the great right which the Clause

was intended to secure might be effectively frustrated by private pressures."

Similarly, in *Ullmann* v. *United States*, 350 U. S. 422, decided in March 1956, the Court said at pp. 426-427:

> "It is relevant to define explicitly the spirit in which the Fifth Amendment's privilege against self-incrimination should be approached. This command of the Fifth Amendment ('nor shall any person . . . be compelled in any criminal case to be a witness against himself . . . .') registers an important advance in the development of our liberty—'one of the great landmarks in man's struggle to make himself civilized.' Time has not shown that protection from the evils against which this safeguard was directed is needless or unwarranted. This constitutional protection must not be interpreted in a hostile or niggardly spirit. Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege. Such a view does scant honor to the patriots who sponsored the Bill of Rights as a condition to acceptance of the Constitution by the ratifying States. The Founders of the Nation were not naive or disregardful of the interests of justice.'"

And, a month later, in April 1956, the Court decided *Slochower* v. *Board of Education*, 350 U. S. 551, saying at pp. 557-558:

> "At the outset we must condemn the practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment. The right of an accused person to refuse to testify, which had been in England merely a rule of evidence, was so important to our forefathers that they raised it to the dignity of a constitutional enactment, and it has been recognized as 'one of the most valuable prerogatives of the citizen.' *Brown* v. *Walker*, 161 U. S.

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[1] Footnotes omitted.

591, 610. We have reaffirmed our faith in this principle recently in *Quinn* v. *United States*, 349 U. S. 155. In *Ullmann* v. *United States*, 350 U. S. 422, decided last month, we scored the assumption that those who claim this privilege are either criminals or perjurers. The privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent either to a confession of guilt or a conclusive presumption of perjury. As we pointed out in *Ullmann*, a witness may have a reasonable fear of prosecution and yet be innocent of any wrongdoing. The privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances. See Griswold, The Fifth Amendment Today (1955)."

But in June 1958, the Committee Chairman still insisted that a witness who claimed this privilege admitted guilt, even in the face of a reference to the holdings just set out by counsel for the witness. The record is revealing on that point (R. 32-33):

"Mr. Raddock. Senator, on the advice of counsel, I must respectfully decline to answer on the ground that to do so might tend to make me a witness against myself.

"The Chairman. I am compelled, and I think everyone who listens or who may read this transcript is compelled, to the conclusion that you are being truthful at least about taking the fifth amendment, and that if you did tell the truth, it might tend to incriminate you, and also those of the union who are responsible for and who authorize the services you performed.

"I will have to let the record stand that way, unless you wish to correct it by sworn testimony.

"Mr. Waldman [Counsel for Raddock, see R. 17]. Well, I assume the record needn't show that the courts have held that the plea of the privilege did not indicate an admission on the part of the witness—

"The Chairman. The attorney can take judicial notice of that as I do. I said he had a right to take it

> under the Constitution, and the committee needs no lecture at this late hour in its work with respect to what the fifth amendment is and the privilege of taking it."

Fourth. We are of course aware that petitioner admitted he was concerned about possible violation of the AFL-CIO code of ethics "concerning union officers who invoke the fifth amendment when asked about their official conduct" (R. 147), but whatever the significance of that admission, it cannot detract from the bearing of the other matters just set forth.

C. PETITIONER'S RELIANCE ON THE DUE PROCESS CLAUSE IS NOT AN AFTERTHOUGHT

As we have repeatedly pointed out, petitioner's refusal to answer was based on the assertion that each question (R. 121-122, 123, 124-125) "relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment and thus be in denial of due process of law."

That being so, we are at a loss to understand the Government's assertion (Br. Op. 10-11) that

> "petitioner never informed the committee that he desired to invoke the privilege but was afraid that it would be used against him on a later trial. On the contrary, he unequivocally disclaimed reliance upon it. His present claim is thus a mere afterthought. It is an attempt to obtain the benefits of the privilege without asserting it."

We submit that the words, "relates or might be claimed to relate to or aid the prosecution of the case in which I am under indictment", are amply broad to cover every objection to the questions that we have argued above in Point IA, pp. 35-41. Significantly enough, the Government in the Court of Appeals made no such contention as is quoted immediately above—no doubt because there it recognized that

"a claim of the privilege does not require any special combination of words" (*Quinn* v. *United States*, 349 U. S. 155, 162), and that "no ritualistic formula or talismanic phrase is essential" (*Emspak* v. *United States*, 349 U. S. 190, 194).

Here the Committee and its counsel repeatedly insisted, during Blaier's questioning as well as during petitioner's, that nothing asked either of them concerning the Lake County transaction could possibly bear upon the subject matter of the Marion County indictment that was pending against them (R. 81-82, 84-85, 86, 97, 132, 132-133, 134), brushing aside petitioner's contentions and those of his counsel (and Blaier's) to the contrary (R. 78, 81, 82, 84, 85, 86, 93-94, 128, 132, 133, 134). In the face of this Court's holding in *Emspak* v. *United States*, 349 U. S. 190, 195, that "a committee is not obliged to either accept or reject an ambiguous constitutional claim the very moment it is first presented", and that (*ibid.*) "The way is always open for the committee to inquire into the nature of the claim before making a ruling," the Committee here did not inquire further, but simply asserted, flatly and repeatedly, that the two transactions were unrelated.

That being so, petitioner is thereafter entirely free to spell out in detail the relationship of the questions asked to the indictment that had already been returned. Having done so, having demonstrated the bearing that the questions would have had upon the pending indictment, we submit it is not now open to the Government to characterize as "a mere afterthought" his present particularization of an objection that was originally summarized with comprehensive clarity.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed, with directions to dismiss the indictment.

Respectfully submitted.

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AUGUST 1961.

APPENDIX

Details of United States v. Saline Bank, 1 Pet. 100

1. This case was No. 58 of the January 1828 Term; its consecutive file number is No. 1399. It was filed on February 24, 1826, and thereafter continued from Term to Term. On Friday, March 7, 1828, it "was submitted to the Consideration of the Court on the Transcript of the Record and the Statements of the respective counsel" (Minute Book for that date; Docket Book D, p. 1500), and on Monday, March 10, 1828, the judgment of the court below (United States District Court for the Western District of Virginia, at Clarksburg [now West Virginia]) was affirmed.

2. The bill of complaint was brought by the United States against 38 named defendants, and was filed in the United States District Court for the Western District of Virginia at Clarksburg on November 15, 1824. It appears as follows in the record:

To the Honourable John P. Jackson Judge of the United States Court for the Western District of Virginia, holden at Clarksburg—

Edwin S. Duncan, Attorney for the United States for the said District, sheweth on behalf of the United States of America that about the year [ ][1] a company was formed of Individuals citizens of Virginia, & within the District aforesaid, for the purpose of transacting and carrying on the ordinary trade or business of Banking, that the said company in pursuance of "Articles of association" adopted by them for the purpose, established a Banking house in the town of Clarksburg, & within the District aforesaid, and assumed the name and stile of the "President, Directors & Company of the Saline Bank of Virginia"—that the said Company proceeded to issue Notes or Bills, purporting to be for sums payable out of the Joint Funds of the said Company: and to make discounts, and exchanges, by means whereof circulation and currency was given to their [*2] said Bills & Notes to a large amount—that of the Notes or Bills of said Company so put into circulation there was received and paid into the Treasury of the United States in discharge of public dues the sum of $10,120, or upwards—

[1] Blank space in the original.

that on the 21st day of October 1819, William Whann Cashier of the Bank of Columbia acting as agent for the Treasury of the United States, deposited with John Webster, the Cashier of the said company the sum of 5831 dollars in said Bills and Notes and obtained a certificate of such deposit from the said John Webster—that the said William Whann on the same day demanded payment of the amount of the said deposit; which was refused by the said John Webster, who alledged as a ground of said refusal, that he was not then prepared with funds, that the said William Whann, at the same time presented a draft drawn by the Treasurer of the United States on the said John Webster, as Cashier of said Virginia Saline Bank for $4290 being also for Notes & Bills of the said Company, received into the Treasury as aforesaid (being parcel of the sum of $10120) which draft was not paid by the said Webster, who stated the same cause for his failure to make payment that he did for his refusal to pay the amount of said deposit—and it is here further shewn that no part of the said deposit or of the said draft has been paid—Your Orator on behalf of the said United States, further begs leave to shew, that the said John Webster, who he prays may be made defendant to this bill of complaint and who combining and confederating with other individuals, members of the said Company, as the Cashier of the said Bank, became possessed of funds to a large amount consisting of specie, and the Notes of chartered & solvent Banks, that he was in the possession of [*3] said funds, at the time when the said Company entered into the fraudulent determination not to redeem its notes—a determination made some time previous to the making of said deposit & the presentation of said draft—that the said funds have been retained by the said John Webster and his confederates. It is also further shewn that the said John Webster is in the possession of the Books, papers and other effects of said company, that he not only refuses to make payment of the amount of the said deposit and draft, but refuses to disclose the situation of the affairs of said Company, or of the names of the individuals who compose said Company—that the members composing said Company, it is ascertained were numerous, and that since the organization thereof, some have departed this life—That the names of some of the said members or stockholders of said company have been discovered, to wit. Jacob Stealy, [plus 36 other names]—who it is also prayed

may be [*4] made defendants to this Bill—that the said last mentioned defendants, conspiring and confederating with the said John Webster, to defraud the United States out of the aforesaid sums of money also refuse to make payment of the amount of the said deposit & draft, and also refuse to disclose the situation of the affairs of said Company, or the amount of its funds or the names of its members, and also deny that they are bound to pay the aforesaid sums, claimed by the United States, alledging at times, that owing to the said Bank not having been incorporated by law, that its proceedings were illegal and its contracts not binding, and that the holders of its paper cannot either resort to the joint funds of the Company, or to the members individually for payment, all which actings and doings of the said defendants are contrary to equity & good conscience and tends to defraud the said United States. To the end therefore, inasmuch as proper relief cannot be obtained in the premises except by the interposition of a Court of equity —It is prayed that the said defendants be compelled to answer the allegations of this bill upon their respective oaths as specially as if thereto particularly interrogated, that they be compelled to state the names of the individuals that compose said company not heretofore named, who it is prayed when their names are discovered may be made defendants to this bill and be compelled to answer the same, that said defendants be compelled to state whether the said John Webster was not the authorized agent or manager of said Company at the period when the said deposit was made & draft was presented—that the said John Webster be [*5] compelled to disclose the situation and amount of the funds of said Company the amount of debts owing to it and the names of the debtors and particularly to state whether, at the time of the refusal of the said Company to redeem its Notes, there was not a large sum in specie & Bank Notes on hand and what has become of it—whether he did not receive in deposit the said sum of 5831 dollars for the Treasury, at the time mentioned and give his certificate of Deposit therefor, whether the exhibit marked A is not a copy of said certificate, and whether the exhibit marked B is not a copy of another certificate given by him of the reasons of his failure to pay the amount of said draft and deposit—that the said John Webster state whether he hath in his possession the original articles of association of said Company & if so, to produce it or a

copy thereof—and that the matter being fully heard, that the said defendants be decreed to pay to the said United States of America the said sum of 10120 dollars with interest from the said 21st day of October 1819, and that the said United States have such other, further and general relief as shall appear just—It is also prayed that a writ of Sp.ª issue &c

E. S. Duncan, D. Atto.

4. Exhibit A to the bill of complaint (MS. p. 5) is like item 1 on p. 101 of 1 Pet., except that the date in the original is "1819" and not "1812". Exhibit B (MS. p. 6) is like item 2, 1 Pet. at 101, while the draft at MS. p. 6 is identical with the draft at 1 Pet. 101.

5. The MS. record then extends in full (pp. 7-44) many subpoenas with marshal's returns thereon, attachments, and recognizances; the whole interpersed with minute entries relating thereto.

6. The defendants' plea (MS. pp. 44-46) is set out in full at 1 Pet. 101-102.

7. The District Court's ruling is as follows (MS. p. 47):

"And this cause by consent of parties coming on to be argued upon the sufficiency of the plea of the defendants to bar the plaintiffs of their right to obtain the relief prayed for in their said bill and arguments of counsel being heard, the Court is of opinion that the said plea and the matters therein contained in manner and form as the same are pleaded and set forth are sufficient to bar the said plaintiffs from the relief prayed for by them in their said bill of complaint against the said defendants. The Court doth therefore order adjudge and decree that the said bill be dismissed, from which said decree the plaintiffs pray an Appeal to the first day of the next term of the Supreme Court which is granted."

8. The transcript also contains, as exhibits, the Articles of Association of the Saline Bank with the names of the subscribers (MS. pp. 47-61); some documents concerning the non-appearance of non-resident defendants (MS. pp. 61-63); and plaintiff's proposed interrogatories.

9. The interrogatories (MS. pp. 63-64) were as follows:

"Interrogatories propounded by the plaintiff to the defendants, who have not appeared and answered—

"Interrogatory 1. Are you a stockholder or partner in the Banking Company, late established in Clarksburg, Harrison County, Virginia, called or denominated the Virginia Saline Bank.

"2. How many shares of the stock do you hold.

"3. What was the capital stock of the company.

"4. What proportion was paid in upon each share of the stock.

"5. Were there written articles or rules adopted for the government of said Company, and where are said articles or rules.

"6. Were you a borrower from the said company and if so to what amount.

"7. Have you discharged your loans, or what amount remains in arrear from you to the Company.

"8. Has there being[3] any dividends of the original stock among the Company.

"9. Have you sold your stock in said company, if so, to whom and when was said sale made.

"10. Was John Webster the Cashier of said Company, if so when was he appointed, and how long has he acted as such—

"11. Where are the books, papers & funds of said Company—

"12. What amount of the Notes of said Company are unredeemed—

"13. What do you know touching a certificate of deposit given by John Webster to the agent of the plaintiff for [ ][2] of the notes of said Company which certificate is refered[4] to in the bill of Complaint.

"14. Did said Company emit or issue Bills payable out of the joint funds of said company, and if so, to what amount.

"15. When did the company cease to make specie payments for its notes."

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[3] These three letters underscored in original.

[2] Blank space in the original.

[4] So in original.